TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 181.

WEEMS STEAMBOAT COMPANY OF BALTIMORE, ET AL.,
PETITIONER,

vs.

PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, PRESIDENT, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

PETITION FOR CERTIORARI FILED SEPTEMBER 10, 1909.
CERTIORARI AND RETURN FILED NOVEMBER 8, 1909.

(20,858.)

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INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from the circuit court of the United States for the eastern district of Virginia	1	1
Caption	1	1
Bill of complaint	2	1
Exhibit A—Deed from Georgeanna Williams *et al.* to the Weems Steamboat Company, January 4, 1892	13	11
B—Deed from Georgeanna Williams *et al.* to the Weems Steamboat Company, January 4, 1892	15	12
C—Deed from Georgeanna Williams *et al.* to the Weems Steamboat Company, January 4, 1892	16	13
D—Deed between R. E. Wynn *et ux.*, the Weems Steamboat Company, and Wm. R. Aylett, October 10, 1895	18	14
E—Deed from Henry T. Douglas, Jr, *et ux.* and the Weems Steamboat Company, November 2, 1901	20	16

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 14, 1908.

	Original.	Print.
Exhibit F—Deed from Georgeanna Williams *et al.* to the Weems Steamboat Company, January 4, 1892	21	17
G—Deed from Miskel A. Carter to the Weems Steamboat Company, January 22, 1903	23	18
H—Deed from J. I. Marks *et al.* to the Weems Steamboat Company, January 31, 1903	23	19
I—Deed from Robert L. Ware to the Weems Steamboat Company, January 21, 1903	24	19
J—Deed from R. G. Neale to the Weems Steamboat Company, January 21, 1903	24	19
K—Deed from B. L. Farinholt and the Weems Steamboat Company, January 1, 1903	25	20
L—Deed from John H. Whealton to the Weems Steamboat Company, January 23, 1903	25	20
M—Agreement between the Weems Steamboat Co. and A. B. Evans, January 31, 1901	26	21
X—Card of Wm. D. Carter, president Business Men's Association of Fredericksburg, December 19, 1902	27	22
T—Letter of Wm. D. Carter to Henry Williams, December 6, 1902	28	23
Z—Certificate of deputy collector at port of Tappahannock, Virginia, February 7, 1903, of enrollment of steamer "Tourist," &c	29	23
XX—Bill of sale of steamer "Tourist," &c	29	24
YY—Article entitled "Fence across wharf; the obstruction removed and warehouse opened by force"	32	26
ZZ—Notice of the People's Steamboat Line	33	26
LL—Notice of river excursions on steamer "Tourist," March 20, 1903	34	27
OO—Card of Wm. D. Carter, president of Business Men's Association	34	27
Order to show cause why injunction should not be granted	35	28
Chancery subpœna	36	29
Marshal's returns	37	29
Joint and separate answer of People's Steamboat Company, William D. Carter, president; A. W. Embrey, vice-president; A. Randolph Howard, treasurer; William D. Carter, and F. V. Archer	38	30
Exhibit Wharfage—Receipts for wharfage	51	41
Exhibit X—Receipt of Adams Express Co	53	43
Separate answer of A. E. Craddock, one of the respondents	56	45
Affidavit of E. D. Cole on behalf of respondents	58	47
Joint affidavit of R. L. Biscoe and others on behalf of respondents	59	48
Affidavit of Chas. C. Rowlett on behalf of respondents	63	51
S. Sydney Bradford on behalf of respondents	64	52
E. W. Stearns on behalf of respondents	66	54
A. Randolph Howard on behalf of respondents (1)	68	55
Wm. D. Carter on behalf of respondents (1)	69	56
M. B. Rowe on behalf of respondents	70	56

	Original.	Print.
Affidavit of B. J. Marshall on behalf of respondents	70	57
Bessie Chesley on behalf of respondents	71	57
J. T. Payne on behalf of respondents	72	58
F. V. Archer on behalf of respondents	74	60
Wm. D. Carter on behalf of respondents (2)	76	61
Wm. D. Carter on behalf of respondents (3)	77	62
E. M. Ware on behalf of respondents	81	66
F. Lawson on behalf of respondents	83	67
H. N. Dyke on behalf of respondents	84	68
C. B. Hundley on behalf of respondents	85	69
Charlie Trimyer on behalf of respondents	86	70
A. Randolph Howard on behalf of respondents (2)	87	71
Mrs. D. E. Smith on behalf of respondents	89	72
G. J. Dunn on behalf of respondents	90	73
John A. Carleton on behalf of respondents	91	74
A. Randolph Howard on behalf of respondents (3)	92	74
Alex. K. Phillips on behalf of respondents	93	75
Henry Williams on behalf of plaintiff	94	76
Tax receipts and checks	101	82
Assessment for year 1899	113	92
Assessment for year 1900	114	92
Assessment for year 1901	115	92
Report to auditor for year ending February 1, 1900	116	92
Report to auditor for year ending February 1, 1902	117	92
Plaintiff's exhibit filed with affidavits	119	93
Plat of lot on river at Tappahannock sold by Wynn and wife to Weems Steamboat Company (see note of clerk)	119	93
Deed from Claus L. Clausen and wife to Georgeanna Williams, wife of Henry Williams, and Matilda S. Forbes, wife of Sydney H. Forbes, April 28, 1876	119	93
Agreement between Henry Williams, agent, &c., of the Weems Steamboat Company, and John H. Whealton, April 13, 1892	121	94
Deed from Thomas H. Massey to Jacob Tome, Mason L. Weems, and Theodore Weems and others, December 20, 1869	122	95
Affidavit of W. J. Phillips on behalf of plaintiff	123	96
Affidavit of William D. Scott on behalf of plaintiff	124	97
Certificate of clerk of Middlesex county court as to qualification of H. C. Farinholt, justice of the peace	125	98
Memorandum of court refusing temporary injunction and for reference of cause to special master	126	98
Replication of complainant to answers of defendants	128	99
Order of reference	129	100
Report of Ernest M. Long, special master	130	101
Notice of special master to take evidence	152	119
Depositions on behalf of plaintiff	153	120
Testimony of B. L. Farinholt	153	120
R. G. Neal	164	130
J. T. Whealton	170	136
T. D. Marks	176	141
S. Settle, Jr.	181	146
V. W. C. Sharp	187	152

	Original.	Print.
Testimony of R. L. Ware	192	157
Bayard Wright	202	166
B. S. Askins	210	174
Henry Williams	217	180
J. D. Garland	237	199
A. B. Evans	252	212
John S. Baxter	263	222
Brief statement of plaintiff's exhibits	266	225
Bayport wharf	266	225
Naylor's Hole	266	225
Wellford's wharf	266	225
Bowler's wharf	267	226
Whealton wharf	267	226
Port Royal wharf	268	226
Monaskon wharf	268	226
Sharp's wharf	268	227
Ware's wharf	269	227
Carter's wharf	269	227
Leedstown wharf	269	227
Tappahannock wharf	269	227
Waterview property	270	228
Plaintiff's Exhibit No. 1—Deed from B. L. Farinholt to Lelia M. Farinholt, June 29, 1892	271	228
Deed from Sarah C. Richardson *et al.* to Benjamin L. Farinholt, May 22, 1885	272	229
Deed from T. C. Montague *et al.* to B. L. Farinholt, July 14, 1870	274	231
No. 2—Deed from B. L. Farinholt to Weems Steamboat Co., January 1, 1903	276	232
No. 3—Plat of Bayport wharf	277	232
No. 4—Plat of Monaskon wharf	278	232
No. 5—Deed from R. G. Neale to Weems Steamboat Co., January 21, 1903	279	233
No. 6—Plat of Bowler's wharf	280	233
No. 7—Deed from John H. Whealton to Weems Steamboat Co., January 23, 1903	281	234
No. 8—Plat of Whealton wharf	282	234
No. 9—Deed of J. I. Marks and T. D. Marks to Weems Steamboat Co., January 31, 1903	283	235
No. 10—Plat of Naylor's wharf	285	235
No. 11—Plat of Wellford wharf	286	235
No. 12—Plat of Sharp's wharf	287	235
No. 13—Plat of Ware's wharf	288	235
No. 14—Deed from Robert L. Ware to Weems Steamboat Co., January 21, 1903	289	236
No. 15—Plat of Tappahannock wharf	290	236
No. 16—Plat of Port Royal wharf	291	236
No. 17—Letter of Wm. D. Carter to Henry Williams, December 6, 1902	291½	237

	Original.	Print.
Plaintiff's Exhibit No. 18—Agreement between Weems Steamboat Co. and A. B. Evans, January 31, 1901	292	237
No. 19—Deed from Miskel A. Carter to Weems Steamboat Co., January 21, 1903	293	239
No. 20—Agreement between the Baltimore and Susquehanna Steam Co., Henry Williams *et ux.*, and Sidney H. Forbes *et ux.*, January 23, 1875	294	239
No. 21—Plat of Carter's wharf	297	240
No. 22—Plat of Waterview wharf	298	240
No. 23—Plat of Leedstown wharf	299	240
No. 24—Plat of lot on river at Tappahannock sold by Wynn *et ux.* to Weems Steamboat Co.	300	240
No. 25—Agreement between Henry Williams, agent, &c., and John H. Whealton, April 13, 1892	301	241
No. 26—Deed from Annette L. Fauntleroy to Robert K. Nevitt, December 11, 1865	301	241
No. 27—Deed from Robert K. Nevitt to Henry H. Fauntleroy, December 11, 1865	303	242
No. 28—Deed from H. H. Fauntleroy to A. L. Fauntleroy, April 4, 1870	304	243
No. 29—Deed from A. L. Fauntleroy to John R. Peed, August 1, 1884	305	244
No. 30—Decree of the circuit court of Richmond county, Virginia, in case of Peed *et al. vs* Carter *et al*	306	245
No. 31—Deed from Lettie A. Carter and husband to Janette I. Marks, December 13, 1888	307	246
No. 32—Deed from Jenette I. Marks and husband to W. A. Jones, December 13, 1888	309	247
No. 33—Title to Naylor's Hole wharf property	310	249
No. 34—Deed from Emmet Crump, assignee in bankruptcy, &c., to A. N. Wellford, March 5, 1873	311	249
No. 35—Deed from Sallie P. Crabb to A. N. Wellford, September 7, 1878	313	250
No. 36—Deed from R. L. Belfield *et ux.* to A. N. Wellford, May 24, 1879	313	251
No. 37—Deed from Milton H. Yeatman *et ux.* to A. N. Wellford, December 1, 1879	315	252
No. 38—Deed from W. A. Jones, special commissioner, &c., to A. N. Wellford, November 18, 1882	316	253

	Original.	Print.
Plaintiff's Exhibit No. 39—Deed from A. N. Wellford to B. Randolph Wellford *et al.*, January 26, 1884	317	254
No. 40—Deed from B. R. Wellford *et al.* to H. T. Douglas, Jr., December 10, 1896	318	255
No. 41—Deed from Henry T. Douglas, Jr., *et ux.* to Weems Steamboat Co., November 2, 1901	320	256
No. 42—Abstract of title to Wellford's wharf property	321	258
No. 43—Decree in case of Neale's Administrator *vs.* Neale *et al.*	323	259
No. 44—Deed from B. L. Farinholt *et al.* to Henry Williams, February 26, 1887	324	259
No. 45—Order of Essex county court, February 16, 1874, granting leave to erect wharf at Bowlers	326	261
No. 46—Agreement between W. T. Neale and the Weems Steamboat Co., December 27, 1893	326	261
No. 47—Agreement between John S. H. Whealton and John Whealton, December 19, 1889	327	262
No. 48—Deed from John H. Whealton *et ux.* to Whealton Packing Co., July 28, 1900	329	264
No. 49—Deed from J. S. H. Whealton to John H. Whealton, August 10, 1891	330	265
No. 50—Deed from James P. Saunders to John S. H. Whealton *et al.*, December 16, 1889	332	266
No. 51—Abstract of title to Whealton wharf property	334	267
No. 52—Deed from Christopher Grammar, trustee, &c., *et al.* to Jacob Tome *et al.*, April 25, 1866	334	268
No. 53—Deed from Jacob Tome *et al.* to Georgeanna Williams *et al.*, February 10, 1875	338	271
No. 54—Deed from Georgeanna Williams *et al.* to the Weems Steamboat Co., January 4, 1892	340	273
No. 55—Abstract of title of the Port Royal wharf	342	274
No. 56—Deed between Addison L. Carter, Mary D. Carter, and James K. Ball, June 30, 1869	345	276
No. 57—Deed from James K. Ball *et al.* to A. L. Carter, July 14, 1871	347	278

	Original.	Print.
Plaintiff's Exhibit No. 58—Deed from A. L. Carter to David Landreth, July 17, 1871	349	279
No. 59—Deed from Mary D. Carter to B. H. Morgan, June 21, 1888	352	282
No. 60—Deed from B. H. Morgan to B. L. Farinholt, April 18, 1889	354	284
No. 61—Deed from B. L. Farinholt to Minnie L. Farinholt, June 30, 1892	356	285
No. 62—Abstract of title to Monaskon wharf.	357	286
No. 63—Deed from L. D. Roane *et ux.* to Claus L. Clauson, December 26, 1872	358	287
No. 64—Deed from Claus L. Clausen *et ux.* to Georgeanna Williams *et al.*, April 28, 1876	360	289
No. 65—Deed from Georgeanna Williams *et al.* to the Weems Steamboat Company, January 4, 1892	362	290
No. 66—Abstract of title to Sharp's wharf property	363	291
No. 67—Will of Edward M. Ware	365	292
No. 68—Deed of Beale and Walker, commissioners, &c., to John S. Braxton, June 1, 1875	368	295
No. 69—Deed from John S. Braxton *et ux.* to Thomas Croxton, January 24, 1876	369	296
No. 70—Deed from T. Croxton, trustee, &c., to M. A. & J. W. Carter, March 6, 1876	371	297
No. 71—Deed from James W. Carter to Miskel A. Carter, January 1, 1880	372	298
No. 72—Deed from James M. Matthews, assignee in bankruptcy, to John S. Braxton, January 21, 1876	373	299
No. 73—Abstract of title to Carter's wharf property	375	301
No. 74—Deed from John R. Marchant to Thomas H. Massey, October 29, 1863	376	301
No. 75—Deed from Thomas H. Massey to Jacob Tome *et al.*, December 20, 1869	377	302
No. 76—Deed from Jacob Tome *et al.* to Georgeanna Williams *et al.*, February 10, 1875	379	304
No. 77—Deed from Gustavia Nihiser *et al.* to Georgeanna Williams *et al*, August 14, 1883	381	305
No. 78—Deed from Georgeanna Williams *et al.* to the Weems Steamboat Co., January 4, 1892	386	310

	Original.	Print.
Plaintiff's Exhibit No. 79—Abstract of title to Leedstown wharf property	388	311
No. 80—Deed from A. H. Jones to H. W. Daingerfield, May 29, 1858	393	313
No. 81—Deed from Henry W. Daingerfield to James M. Matthews, May 29, 1858	391	314
No. 82—Deed from Henry W. Daingerfield *et ux.* to Zebulon S. Farland, June 22, 1866	393	315
No. 83—Deed from Zebulon S. Farland *et ux.* to Mason L. Weems *et al.*, May 28, 1867	394	316
No. 84—Deed from James M. Matthews, trustee, &c., to Mason L. Weems *et al.*, July 24, 1869	396	318
No. 85—Deed from Jacob Tome *et al.* to Georgeanna Williams *et al.*, February 15, 1875	398	320
No. 86—Deed from Georgeanna Williams *et al.* to the Weems Steamboat Co., January 4, 1892	401	321
No. 87—Deed from R. E. Wynn *et ux.* to the Weems Steamboat Co., October 10, 1895	402	322
Plat of property sold	403	324
No. 88—Deed from R. E. Wynn to Fanny B. Wynn, April 13, 1889	404	325
No. 89—Deed from H. R. Pollard, trustee, to R. E. Wynn, August 15, 1881	406	326
No. 90—Deed of R. E. Wynn *et ux.* to H. R. Pollard, January 1, 1872	407	327
No. 91—Deed from John A. Parker to R. E. Wynn, March 16, 1867	409	329
No. 92—Abstract of title of the Tappahannock wharf property	410	330
No. 93—Deed from Opie Norris *et al.* to James W. Fisher, May 1, 1857	413	332
Deed from Jacob Cohn, assignee in bankruptcy, to A. B. Evans, November 20, 1874	415	334
No. 94—Abstract of title of Bayport wharf and Waterview wharf	416	335
Depositions on behalf of defendants	418	336
Testimony of Webb Smith	418	336
Matthew J. Gately	426	343
B. J. Saunders	428	345
C. W. Jones	445	361
T. N. Brent	447	363
R. L. Biscoe	451	366
Bessie Chesley	452	367
Henry Byrd	454	369
A. R. Howard	455	370

	Original.	Print.
Testimony of A. C. Fisher	462	375
S. E. Foster	475	386
Charles D. Foster	475	387
J. P. Colbert	478	389
M. B. Rowe	480	390
G. E. Farish	481	391
G. B. Farish	483	393
J. A. Turner	484	394
John R. Sherwood	493	402
J. Z. Taylor	496	405
A. E. Craddock	497	406
Brief statement of defendants' exhibits	503	412
Defendants' Exhibit A—Plat of Sharp's wharf	506	413
B—Order of Essex county court, September 19, 1882	507	414
C—Order of Essex county court, March 17, 1862	508	415
D—Plat of Tappahannock town	510	415
E—Plat of wharf at Tappahannock, Va	511	415
F—Plat of wharf at Leedstown, Va	512	415
G—Extracts from Henning Statutes at Large (not set out)	513	416
H—Checks of People's Steamboat Co. to Whealton Packing Co., May 14, 1903	513	416
I—Receipt of A. B. Evans, May 14, 1903, and checks of the People's Steamboat Co., May 14 and June 10, 1903	514	417
J—Check of People's Steamboat Co. to R. G. Neale, July 10, 1903	516	419
K—Check of People's Steamboat Co. to J. H. Carter, May 14, 1903	517	420
L—Letter of B. L. Farinholt to People's Steamboat Co., May 26, 1903, and checks	518	420
M—Receipt of T. D. Marks, April 30, 1903	519	422
N—Order of Richmond county court, July 8, 1890	519	422
O—Order of Richmond county court, June 14, 1887	520	422
P—Order of Richmond county court, June 2, 1879	521	423
Q—Deed of Christopher Grammar, trustee, &c., *et al.* to Jacob Tome *et al.*, April 25, 1866	523	425
R—Order of county court of Lancaster county, August 17, 1896	525	427
S—Report of commissioner of roads for the township of Rappahannock, county of Essex, &c	526	428
Consent of property owners	526	428
Petition to open road	527	429
Order of county court, July 23, 1874	528	429
Plat of proposed road	530	430

	Original.	Print.
Defendants' Exhibit T—Indictment found by grand jury in the county court of Essex county against Melton Neale, &c.	531	431
U—Petition to the county court of Middlesex	533	432
Order of court, August 25, 1870	533	432
Report of viewers	534	433
Order of court	535	434
V—List of public roads in Washington district of Westmoreland county	537	435
W—Proceedings of board of supervisors of Lancaster county	538	436
X—Proceedings of board of supervisors of Richmond county	539	437
Y—Proceedings of board of supervisors of Richmond county	540	437
Z—Copy from the road docket of clerk of county court of Richmond county	541	439
AA—Copy from the road docket of clerk of county court of Richmond county	542	439
Supplemental report of Ernest M. Long, special master	542	439
Exceptions of defendants to report and supplemental report of special master	562	455
Opinion of the court	567	459
Decree fixing special master's compensation	573	464
Decree refusing injunction and dismissing bill	574	465
Petition for appeal and assignment of errors	575	466
Order allowing appeal and fixing amount of appeal bond	577	468
Appeal bond	577	468
Citation	579	469
Order transmitting record	580	470
Clerk's certificate	580	470
Docket entries	581	470
Opinion *per curiam*	583	471
Decree	585	472
Petition to stay proceedings	586	472
Order to stay proceedings	587	473
Clerk's certificate	587	473
Return to writ of certiorari	588	473
Stipulation as to return to writ of certiorari	589	474
Writ of certiorari	591	475

a *Transcript of Record.*

United States Circuit Court of Appeals, Fourth Circuit.

No. 662.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, Appellant,
versus
PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, President, *et al.*, Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia, at Richmond.

Record Filed February 19th, 1906.

1 *Transcript of Record.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in October, being the second day of the same month, in the year of our Lord one thousand, nine hundred and five.

Present: The Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia:

Among other were the following proceedings, to-wit:

In Equity.

THE WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, a Body Corporate, Plaintiff,
versus
PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, President; A. W. EMBREY, Vice-President; A. RANDOLPH HOWARD, Treasurer; WILLIAM D. CARTER, —— CRADDOCK, F. V. ARCHER, Defendants.

2 *Bill of Complaint.*

Filed April 16th, 1903.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, a Body Corporate, Plaintiff,
vs.
PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, President; A. W. EMBREY, Vice-President; A. RANDOLPH HOWARD, Treasurer; WILLIAM D. CARTER, —— CRADDOCK, F. V. ARCHER, Defendants.

To the Honorable the Judges of the Circuit Court of the United States in and for the Eastern District of Virginia:

The Weems Steamboat Company of Baltimore City, a corporation organized under and pursuant to the laws of the State of Maryland,

and having its principal place of business in the city of Baltimore, in the State of Maryland, and having always been and now being a citizen and resident of the said State of Maryland, brings this its bill of complaint against People's Steamboat Company, a corporation organized under and pursuant to the laws of Virginia, and having its principal place of business in the city of Fredericksburg, in said State of Virginia, William D. Carter, president of said company, A. W. Embrey, vice-president of said company, and A. Randolph Howard, treasurer of said company, and William D. Carter, —— Craddock and F. V. Archer, all now residents and citizens of the State of Virginia, and of the Eastern District of Virginia, and all having been residents and citizens of the said State of Virginia, and of said District, at and during the time of the commission of the wrongs hereinafter set forth and complained of.

And thereupon your orator complains and says that it is the fee simple owner of the following wharves on the Rappahannock river, in the State of Virginia, viz.: Port Royal Wharf, in the county of Caroline; Leedstown Wharf, in the county of Westmoreland; Tappahannock Wharf, in the county of Essex; Wellford's Wharf, in the county of Richmond, and Sharp's Wharf, also in the county of Richmond; and that it is the fee simple owner of the lands upon which said wharves and the piers constituting part of said wharves are built.

3 Your orator files with this bill, as part thereof, the following deeds by which it acquired the title to all said wharves and the land on which they are built, viz.:

Deed of January 4, 1892, from Georgeanna Williams and others to your orator, conveying the Port Royal wharf and the land on which it is built, marked Exhibit A.

Deed of January 4, 1892, from Georganna Williams and others to your orator, conveying the Leedstown wharf and the land on which it is built, marked Exhibit B.

Deed of January 4, 1892, from Georgeanna Williams and others to your orator, conveying the Tappahannock wharf and the land upon which it is mostly built, marked Exhibit C, also deed of October 10, 1895, from R. E. Wynn and wife to your orator, conveying the remainder of the land on which said wharf is built, marked Exhibit D.

Deed of November 2, 1901, from Henry T. Douglas and wife to your orator, conveying the Wellford's wharf and the land on which it is built, marked Exhibit E.

Deed of January 4, 1892, from Georgeanna Williams and others to your orator, conveying the Sharp's wharf and the land on which it is built, marked Exhibit F.

Your orator further says that the several parcels of land aforesaid on the banks of the Rappahannock River were acquired by your orator and its predecessors in the ownership of a line of steamboats plying between Baltimore in the State of Maryland, and Fredericksburg, in the State of Virginia, for the purpose of erecting thereon, and from, into the Rappahannock river, wharves and piers for the exclusive use of said steamboats, and of those patronizing said steamboats, and your orator and its predecessors in title have been in sole

and exclusive possession of said wharves and lands for more than fifteen years, which said exclusive possession has been open and notorious during said period of more than fifteen years.

Your orator further says that the acquisition of the land and the building of said wharves has cost in the neighborhood of $50,000, and that the average annual cost of keeping the said wharves in safe repair is anywhere from $5,000 to $10,000.

Your orator further says that it is the lessee for valuable consideration of the following wharves on the Rappahannock River and of the land on which said wharves are built, viz.:

4 Carter's Wharf in Richmond County.
Naylor's Hole in Richmond County.
Ware's Wharf in Essex County.
Bowler's Wharf in Essex County.
Bay Port in Middlesex County.
Monaskon in Lancaster County.
Wheelton in Richmond County.
Water View in Middlesex County.

Your orator filed with this bill as part thereof the following original leases by which it acquired the title as such lessee to all said wharves and the land on which they are built, viz.:

Lease of January 22, 1903, from M. A. Carter to your orator, leasing for the period of one year from said date the wharf property known as Carter's Wharf, aforesaid, marked Exhibit G.

Lease of January 31, 1903, from J. T. Marks and others to your orator, leasing for the term of one year from said date the wharf property known as Naylor's Hole, aforesaid, marked Exhibit H.

Lease of January 21, 1903, from Robert L. Ware, to your orator, leasing for the term of one year from said date the wharf property known as Ware's Wharf, aforesaid, marked Exhibit I.

Lease of January 21, 1903, from R. G. Neale to your orator, leasing for the term of one year from said date the wharf property known as Bowler's Wharf, aforesaid, marked Exhibit J.

Lease of January 1, 1903, from B. L. Farinholt to your orator, leasing for the term of one year from said date the two wharf properties known respectively as Bay Port and Monaskon, aforesaid, marked Exhibit K.

Lease of January 23, 1903, from John H. Whealton to your orator, leasing for the term of one year from said date the wharf property known as Whealton's Wharf, aforesaid marked Exhibit L.

Lease of January 31, 1901, from A. B. Evans to your orator, leasing from year to year from said date the wharf property known as Waterview wharf aforesaid, marked Exhibit M. This lease is still continuing and has not been terminated.

Your orator further says that it and its predecessors in title have leased and used said leased wharves for many years prior hereto, said use of said wharves having been exclusive.

5 Your orator further says that the aforesaid lessors own said wharf properties respectively, and had the right to lease the same to your orator.

Your orator further says that it and its predecessors in title have

been for many years, and it is now, engaged in the business of operating a line of steamboats plying on the Rappahannock river as a carrier of passengers and freight, and have used said wharves in said business.

Your orator further says that the following statute is found in the Code of Virginia, and has been the law in Virginia certainly ever since 1839-40, to-wit:

"Any person owning land upon a water course may erect a wharf upon the same, or pier or bulkhead in such water course opposite his land, provided the navigation be not obstructed, nor the private rights of any person be otherwise injured thereby. But the court of the County in which such wharf, pier or bulkhead is, after causing ten days' notice to be given to the owner thereof of its intention to consider the subject, if it be satisfied that such wharf, pier or bulkhead obstructs the navigation of the water course, or so encroaches on any public landing as to prevent the free use thereof, may abate the same." (See Code 1887, section 998.)

Your orator further says that none of said wharves owned by or leased to it as aforesaid obstruct the navigation of the water course upon which said wharves, or any of them, are located, or encroach on any public landing as to prevent the free use thereof, and that said wharves are and have always been private wharves.

Your orator further says that in the month of November, 1902, a steamboat called the Tourist was started to run between Fredericksburg and Urbanna, in Middlesex County, and said steamboat stopped at all the aforesaid wharves owned by your orator, and all those controlled by said orator, to receive and discharge freight and passengers without any authority or right so to do, and said steamboat has continued to run back and forth between Fredericksburg and Urbanna continuously ever since, and to stop at all said wharves owned by your orator, and at all those wharves leased as aforesaid by your orator, for the purpose of receiving and discharging freight and passengers without any authority or right so to do, and in the face of, and in defiance of, the prohibition of your orator so to do.

Your orator further says that when said steamboat was started on the Rappahannock river, and for some time thereafter, the aforesaid William D. Carter, appeared to have control of said steamboat, and claimed it was being run by the Business Men's Association
6 of Fredericksburg, a voluntary and unincorporated association, as will appear by a card published by said Carter as the president of said association, on December 19, 1902, in the Tidewater Democrat, a newspaper published in Tappahannock, Va. (See said card filed herewith as Exhibit X.)

Your orator further says that when said steamboat was first started on said river, in the month of November, 1902, your orator caused to be served on said Carter and on the captain of said steamboat, written notice forbidding the stoppage at, and the use of your orator's wharves on the Rappahannock as aforesaid; and received in reply from said Carter the letter filed herewith as Exhibit T, dated December 6, 1902, avowing the purpose of those controlling said boat to continue to use said wharves in defiance of your orator's plain rights in the premises.

Your orator further says that when the steamboat Tourist reached the aforesaid Port Royal Wharf of your orator, on the 19th December, 1902, the agent of your orator at said wharf forbad- those in charge of said steamboat to land at said wharf, or to discharge or receive any passengers or freight on said wharf, but said persons in charge of said steamer, with force and violence, landed its passengers and freight on said wharf, and with force and violence broke open the warehouse of your orator at said wharf, so as to discharge its freight through the same, as will further appear by a clipping from the Fredericksburg Star, a newspaper published in Fredericksburg, containing an interview with said F. V. Archer, an officer on said boat, on said occasion, filed herewith as Exhibit YY.

Your orator further says that it appears from the certificate of G. S. Bundy, Deputy Collector of the Port of Rappahannock, Va., filed with this bill as Exhibit Z, that the said steamer Tourist was enrolled in said office January 6, 1903, in the name of said William D. Carter, as sole owner, and that it further appears from a certified copy of a bill of sale of said steamer filed herewith as Exhibit XX, that the Rock Creek Steamboat Co. of Anne Arundel County, Md., sold the same on the 27th December, 1902, to said William D. Carter.

Your orator further says that on the 17th January, 1903, the Corporation Court of Fredericksburg chartered the aforesaid People's Steamboat Company, with said William D. Carter, as president, the said A. W. Embrey, as vice-president, and the said A. Randolph Howard, as treasurer, and that ever since said charter was obtained the said Steamer Tourist has been operated and conducted by said corporation, as will appear from the public advertisements of the movements of said boat made by said William D. Carter, as president of said corporation, filed herewith as Exhibit ZZ.

7 Your orator further says that the said Steamboat Tourist has been since it was started in November, 1902, and to the present time, continuously stopped at all the aforesaid wharves owned and controlled by your orator, for the purpose of receiving and discharging both passengers and freight, and has during all this time received and discharged both passengers and freight at all said wharves against the protest of your orator, and is still persisting in this flagrant invasion and violation of the right of your orator to the exclusive use and control of all said wharves, both those owned by your orator and those leased by it as aforesaid, and your orator is informed by its agents and charges that the said William D. Carter has urged the people along the river to resort to the use of force in the use of your orator's wharves and the cars used by your orator to move freight on said wharves, and in the use of your orator's warehouses on said wharves, in order that they may patronize the Steamer Tourist in violation of the rights of your orator, and that said Carter has offered to indemnify such trespassers, against suits that your orator may bring against them, and that persons wishing to patronize the said steamboat have resorted to force and have taken forcible possession of such cars and used the same, and are continuing to do so, and to use by force your orator's wharves against the oft-repeated protests of your orator.

Your orator further says that the defendants are thus by force and violence using the wharves of your orator, erected and kept in repair at immense cost, for the purpose of diverting from your orator's steamboats the traffic and travel which have been attracted to said wharves and to said steamboats by the erection of said wharves and the facilities furnished at said wharves for the public accommodation, and to induce said traffic and travel to patronize the said steamboat Tourist to the great loss and injury of the business of your orator's steamboat line, which steamboat line represents an investment of five hundred thousand dollars ($500,000). And the said defendants have to a certain extent accomplished said purpose, and are damaging your orator thousands of dollars, and threaten to damage your orator many thousand dollars more unless they shall be restrained by the strong arm of the law.

Your orator further charges that the matter in dispute in this cause exceeds $2,000, exclusive of interest and costs, and that the rights and property in dispute and controversy herein greatly exceed in value the said sum of $2,000, exclusive of interests and costs.

Your orator further says that it has always been the fixed and invariable policy of the company and of its predecessors in the ownership of said steamboat line to forbid the use of its
8 wharves for any purpose except for the receipt and discharge of freight and passengers for its own boats, only making exception occasionally for sail boats, and it has so constantly notified the public.

Your orator further says that the public in all the aforesaid counties in which your orator owns or controls the aforesaid wharves, have against the protest of your orator used said wharves for the purpose of landing from or getting aboard said Steamboat Tourist, and for the purpose of shipping freight on and discharging freight from said steamboat, and are continuing to do so, overawing your orator's agents (whenever resistance is made) by force and intimidation, and it is impossible for your orator to obtain the names and residence of a large majority of those who are thus trespassing on the property and trampling upon the rights of your orator at all the aforesaid wharves, and diverting trade from your orator's steamboat line.

Your orator further says that the public, other than those residing in the aforesaid counties in which your orator owns and controls the aforesaid wharves, have against the protest of your orator used and are using said wharves for the purpose of landing from or getting aboard said steamboat Tourist, and for the purpose of shipping freight and discharging freight from said steamboat, and are encouraged so to do by the defendants, and it is impossible for your orator to obtain any information as to the names of residence- of such traveling public who are using the wharves of your orator against its protest to patronize the said steamboat, and thus to divert trade from your orator's steamboats and to injure the business of your orator irreparably.

Your orator further says that it is advised that the Supreme Court of the United States has decided that "the ownership of and dominion and soverignty over lands covered by tidewaters, within

the limits of the several States, belong to the respective States within which they are found, with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in the waters, and subject always to the paramount right of Congress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the States."

The same court has also decided that "whether the title of the owner of a lot (on navigable river) extends beyond the dry land or not, he is certainly entitled to the rights of a riparian proprietor whose land is bounded by a navigable stream, and among those rights are access to the navigable part of the river from the front of his lot, the *the* right to make a landing, wharf or pier
9 for his own use or for the use of the public, subject to such general rules and regulations as the Legislature may see proper to impose for the protection of the rights of the public."

The Supreme Court further says that this riparian right is property, and is valuable, and is a right of which the owner can only be deprived in accordance with established law, and if necessary, that it be taken for the public good, he must be duly compensated therefor.

The Supreme Court further says of the law in Virginia: "In Virginia, by virtue of Statutes beginning in 1679, the owner of land bounded by the tidewaters has the title to ordinary low water mark, and the right to build wharves, provided they do not obstruct navigation."

Your orator further says that it is advised that the Court of Appeals of Virginia has decided that "the rights both at common law and by statute are secured to the riparian owner to erect wharves, piers or bulkheads for his own use or the use of the public, subject to only such general rules and regulations as the Legislature may prescribe, and the only limitation upon such right is, that navigation may not be obstructed, or the rights of others be injured. This is the common law rule, and the same rights are secured by statute in this State."

The Court of Appeals further says of this right of the wharf owner; "The right of the riparian owner is not a mere license or privilege, but is property, property in the soil up to the line of navigability, though covered by water, for the wharf, pier, or bulkhead can only be built on the soil. It is not a mere easement to pass over the water or a privilege to use the surface, but property in the soil under the water on which to fasten and build such structures, and for this purpose, and subject to the restriction that navigation shall not be obstructed, is as much property as the land above the margin of a navigable stream."

Your orator submits that from these decisions of the United States Courts the wharves owned by your orator on both sides of the Rappahannock River, and those owned by private individuals, are the prviate property of their respective owners, as much so as any other property they may own, and the public have no interest in or rights to the use of such wharves, except such as the owners thereof

choose to grant them, and any person seeking to use said wharves for any purpose without such permission of the owners is a trespasser, and that this right of your orator to the exclusive use of its wharves applies equally to those wharves which it leases from others as aforesaid.

Your orator further submits that any person without the owner's permission, touching at any of the aforesaid wharves of your
10 orator, with a steamboat or vessel, for the purpose of securing or discharging freight or passengers, is a trespasser, and any person coming upon such wharves to receive or deliver freight, or landing or taking passage from such wharves, without the permission of the owner, is also a trespasser.

Your orator further submits that neither Congress nor the Virginia Legislature can give the public any right to the use of your orator's private wharves aforesaid, nor can they interfere with their exclusive use by your orator so long as said wharves, piers and bulkheads do not obstruct the navigation of the Rappahannock River.

Your orator further says that it has no plain and adequate remedy at law for the great and irreparable damage and injury which it is suffering at the hands of the defendants, and at the hands of the travelling public and those shipping and receiving freight by said Steamboat Tourist.

First. Because your orator believes and expressly charges that the People's Steamboat Company is an insolvent corporation.

Second. Because a recovery in an action of trespass could only be for compensation for injury done to the property trespassed on, to-wit, to the physical structure of the wharf, and could not cover the heavy collateral and consequential damages suffered by your orator in the diversion and loss of trade by reason of the use of your orator's wharves by the said steamboat Tourist and the travelling public.

Third. Because if it was competent in an action at law to recover such collateral and consequential damages it would be wholly impossible to ascertain or approximately estimate such damages since it would be impossible to establish the number of passengers, or the amount and value of the freight transported by said steamboat Tourist to and from the wharves of your orator.

Fourth. Because it is impossible for your orator to ascertain the names or the residences of those persons who at the aforesaid wharves of your orator trespass on said wharves by passing over the same in landing from or embarking on said steamer Tourist, or in landing freight from or loading freight on said steamer Tourist.

Fifth. Because the trespasses by the said defendant, and by those persons whose names are unknown to your orator, upon the wharves of your orator are continuous, and are being repeated every
11 day at the wharves of your orator, in the counties of Caroline, Westmoreland, Essex, Richmond, Lancaster and Middlesex, and it would be impossible for your orator to obtain the legal evidence of all such trespasses to be used in suits at law.

Sixth. Because a multitude of people, by reason of the running of said steamer Tourist and its forceable use of your orator's wharves

every day in the year, except Sunday, are trespassing upon the wharves of your orator aforesaid, and each one of said multitude is controverting the right of your orator to the exclusive use of its said wharves, standing on his own claim to the free use thereof in the face of the protest of your orator, and your orator would have to institute a great multiplicity of suits against all such trespassers.

Seventh. Because numerous and continuous acts of trespass are being committed by the defendants, and their further continuance boldly threatened under a claim of right, the injury resulting from each act would be difficult, if not impossible, to prove, and inconsiderable in amount compared with the expense of prosecuting actions at law to recover damages therefor.

Eighth. Because rights of your orator to the exclusive use and enjoyment of all of said wharves, and the exclusive possession thereof being established by the law of the land your orator is entitled to be quieted therein, and to be protected against the continuous trespasses thereon of the defendants and the public, and a multiciplicity of suits avoided.

Your orator further says that —— Craddock is the Captain of said Steamboat Tourist, and that said F. V. Archer advertises himself, as will be seen by his card published in the Fredericksburg papers, filed herewith as Exhibit LL, as general manager of said steamboat; and your orator is informed and therefore charges that said F. V. Archer is general manager of said Steamboat Tourist.

For as much as your orator has no adequate relief except in this court where matters of this kind are properly cognizable and relievable, and to the end therefore that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and may make answer to the matters hereinbefore stated and charged but not under oath, an answer under oath being hereby expressly waived. And your orator prays that your Honors may grant a writ of injunction issuing out of and under the seal of this Honorable Court perpetually enjoining and restraining the said defendants or any of them, their agents, attorneys, servants, clerks, or em-
12 ployees, or any of them from stopping or permitting to stop the Steamboat Tourist or any other boat controlled by them or any of them at any of the aforesaid wharves, piers or bulkheads owned or controlled by your orator, and from receiving or discharging passengers or freight from any such boat at any of the aforesaid wharves, piers or bulkheads owned or controlled by your orator, and from advertising that said steamboat Tourist or any boat controlled by them or any of them will stop at any of said wharves owned or controlled by your orator, as aforesaid.

Your orator further prays that a provisional or preliminary injunction be issued restraining the said defendants or any of them, their agents, attorneys, servants, clerks, or employés, or any of them from stopping or permitting to stop the said Steamboat Tourist and any other boat controlled by said defendants or any of them at any of the aforesaid wharves, piers, etc., owned and controlled by your orator, and from receiving or discharging passengers or freight from said boat at any of the aforesaid wharves, piers, etc., owned or con-

trolled by your orator, and from advertising that said steamboat or any boat controlled by them will stop at any of said wharves owned or controlled by your orator as aforesaid, and your orator prays for such other and further general relief as the equity of the case may require, and to your Honors may seem just.

May it please your Honor to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America directed to the said People's Steamboat Company, William E. Carter, president; A. W. Embrey, vice-president; A. Randolph Howard, treasurer; the said Wiliam D. Carter, and the said —— Craddock, and the said F. V. Archer, commanding them, on a day certain, to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall seem proper, and required by the principles of equity and good conscience.

THE WEEMS STEAMBOAT COMPANY
OF BALTIMORE CITY,
By HENRY WILLIAMS, *President.*
H. ST. GEO. R. FITZHUGH,
Solicitor for Plaintiff & of Counsel.

[Seal of Weems Steamboat Company of Baltimore City.]

Attest:

THEODORE W. FORBES, *Secretary.*

13 STATE OF MARYLAND,
Baltimore City, To-wit:

I hereby certify that on this 11th day of April, A. D. 1903, before me, the subscriber, a Notary Public of the State of Maryland, in and for the said City of Baltimore, personally appeared Henry Williams and made oath in due form of law that he is president of the Weems Steamboat Company of Baltimore City, a corporation organized under and pursuant to the laws of the State of Maryland, and that he is duly authorized to make this affidavit, and that the matters and facts set forth or mentioned in the aforegoing bill of complaint are true to the best of his knowledge and belief.

Witness my hand and notarial seal this 11th day of April, A. D. 1903.

[NOTARIAL SEAL.] FELIX R. SULLIVAN,
Notary Public.

Felix R. Sullivan, No. 25 South Street, Baltimore, Md.

EXHIBITS.

EXHIBIT A.

This deed, Made this fourth day of January, in the year eighteen hundred and ninety-two, by us, Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sidney H. Forbes, her husband, all of the city of Baltimore, State of Maryland:

Witnesseth, That in consideration and fulfillment of a contract between us and The Weems Steamboat Company, of Baltimore City, a corporation duly incorporated, and also of one dollar, to us in hand paid, the receipt of which is hereby acknowledged, we, the said Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sidney H. Forbes, her husband, do grant unto the said The Weems Steamboat Company of Baltimore City, its successors and assigns, all of our right, title and interest, at law or in equity, jointly or severally, as owners, lessees or otherwise, in and to any and all of the lands and appurtenances, wharf, land appurtenant to and used therewith, easements and privileges hereinafter mentioned or described, which wharf is generally known by the name, or situated at the place hereinafter mentioned, and
14 is situated *at the place hereinafter mentioned, and is situated* in the County of Caroline, in the State of Virginia, that is to say—

Port Royal Wharf.

Together, With all of the lands and rights adjacent to or connected with the above mentioned wharf or landing, which were conveyed to Jacob Tome and others by deed from Christopher Grammer, Trustee, dated 25th April, 1866.

Witness the following signatures and seals.

GEORGEANNA WILLIAMS. [SEAL.]
HENRY WILLIAMS. [SEAL.]
MATILDA S. FORBES. [SEAL.]
SYDNEY H. FORBES. [SEAL.]

Test: WM. H. MASSON.

STATE OF MARYLAND,
City of Baltimore, To-wit:

I hereby certify that on this Fourth day of January, 1892, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, aforesaid, personally appeared Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sydney H. Forbes, her husband, and acknowledged the foregoing Deed to be the act and Deed of each of them respectively.

In testimony whereof, I have hereunto set my hand and affixed my Notarial Seal the day and year above written.

WM. H. MASSON,
Notary Public.

In Caroline County Court, Clerk's Office, January 5, 1892. The foregoing Deed, with the annexed certificate, was this day received in the office. It is admitted to record and is truly recorded.

Teste: S. W. VALENTINE, *D'y C. C.*

15 EXHIBIT B.

This Deed, Made this Fourth day of January, in the year eighteen hundred and ninety-two, by us, Georgeanna Williams and Henry Williams, her husband, Matilda S. Forbes and Sydney H. Forbes, her husband, and Henry Williams, Trustee of the Estate of Theodore Weems, deceased, all of the City of Baltimore, State of Maryland:

Witnesseth, That in consideration and fulfilment of a contract between us and the Weems Steamboat Company of Baltimore City, a corporation duly incorporated, and also of the sum of one dollar, to us in hand paid, the receipt of which is hereby acknowledged, we, the said Georgeanna Williams and Henry Williams, her husband, Matilda S. Forbes and Sydney H. Forbes, her husband, and Henry Williams, Trustee of the Estate of Theodore Weems, deceased, do grant unto the said The Weems Steamboat Company of Baltimore City, its successors and assigns all of our right, title and interest, at law or in equity, jointly or severally, as owners, lessees or otherwise, in and so any and all of the lands and appurtenances, wharf land appurtenant to and used therewith, easements and privileges hereinafter mentioned or described, which wharf is generally known by the name, or situated at the place hereinafter mentioned, and is situated in the County of Westmoreland, in the State of Virginia, that is to say—

Leedstown Wharf.

Together with all of the lands and rights adjacent to or connected with the above mentioned wharf or landing which were conveyed to Joseph James Taylor and others by deed from T. H. Massey, dated the twentieth December, 1869.

Witness the following signatures and seals.

GEORGEANNA WILLIAMS. [SEAL.]
HENRY WILLIAMS. [SEAL.]
MATILDA S. FORBES. [SEAL.]
SYDNEY H. FORBES [SEAL.]

STATE OF MARYLAND,
City of Baltimore, To-wit:

I hereby certify that on this Fourth day of January, 1892, before me the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared George-

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anna Williams and Henry Williams, her husband, Matilda
16 S. Forbes and Sydney H. Forbes, her husband, *Matilda S. Forbes and Sydney H. Forbes, her husband,* and Henry Williams, Trustee of the estate of Theodore Weems, deceased, and acknowledged the foregoing Deed to be the act and deed of each of them, respectively.

In testimony whereof, I have hereunto set my hand and affixed my Notarial Seal the day and year above written.

[SEAL.] WM. H. MASSON,
Notary Public.

VIRGINIA:

Clerk's Office of the County Court of Westmoreland County, January 6, 1892.

The foregoing deed of bargain and sale from Georgeanna Williams and Henry Williams, her husband, Matilda S. Forbes and Sydney H. Forbes, her husband, to the Weems Steamboat Company of Baltimore City, conveying real estate, was this day received in my office, and with the certificate of acknowledgement thereon endorsed admitted to record as to them.

Teste: J. WARREN HARRIS, *Clerk.*

Examined January 6, 1892.

Teste: J. WARREN HARRIS, *Clerk.*

EXHIBIT C.

This Deed, Made this fourth day of January, in the year eighteen hundred and nine---two, by us, Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sydney H. Forbes, her husband, all of the City of Baltimore, State of Maryland.

Witnesseth, That in consideration and fulfillment of a contract between us and The Weems Steamboat Company, of Baltimore City, a corporation duly incorporated, and also of one dollar, to us in hand paid, the receipt of which is hereby acknowledged, we, the said Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes, and Sydney H. Forbes, her husband, do grant unto the said The Weems Steamboat Company, of Baltimore City, its successors and assigns, all, of our right, title and interest, at law or in equity, jointly or severally, as owners, lessees or otherwise, in and to the wharf which is generally known as Tappahannock Wharf, and is situated in the County of Essex, in the State
17 of Virginia, and all of the lands appurte-nt to and used therewith, and the easements and privileges thereto appertaining.

Witness the following signatures and seals.

GEORGEANNA WILLIAMS. [SEAL.]
HENRY WILLIAMS. [SEAL.]
MATILDA S. FORBES. [SEAL.]
SYDNEY H. FORBES [SEAL.]

Test: WM. H. MASSON.

CLOSE IN CENTER

STATE OF MARYLAND,
City of Baltimore, To-wit:

I hereby certify that on this Fourth day of January, 1892, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sydney H. Forbes, her husband, and acknowledged the foregoing deed to be the act and deed of each of them, respectively.

In testimony whereof, I have hereunto set my hand and affixed my Notarial Seal the day and year above written.

[SEAL.] WM. H. MASSON,
Notary Public.

VIRGINIA:

In Essex County Court, Clerk's Office, January 5, 1892.

This deed was presented, and with the certificate annexed, admitted to record at 5 o'clock P. M.

Teste: H. SOUTHWORTH, *Clerk.*

18 EXHIBIT D.

This Deed, Made and entered into this 10th day of October, 1895, between R. E. Wynn and Fannie B. Wynn (his wife), parties of the first part, of the County of Essex, State of Virginia, and "The Weems Steamboat Company," of the City of Baltimore, State of Maryland, party of the second part, and Wm. R. Aylett, of the County of King William, State of Virginia, party of the third part.

Witnesseth, That whereas the said R. E. Wynn and Fannie B. Wynn, have this day bargained and sold unto the said "Weems Steamboat Company," the following tract or parcel of land situated in the town of Tappahannock, Essex County, Virginia, and lying on the Rappahannock River, and bounded as follows: By a line starting from an iron pipe set in the ground to mark the corner, said pipe being one chain and sixty-five links N. 48 3-9 E. from the North East corner of the Dwelling house of R. E. Wynn, and running out into the river from said pipe on a course N. 62 E. and from said pipe N. 1 3/4 E. one chain and sixty-eight links to a corner of line between Wynn's lot and the lot — Mrs. Margaret Latane, thence N. 62 E. out into the river, and the East Side of said lot of land is bound by the line of the water in the Rappahannock River, between the points where said two courses running N. 62 E. intersect the line of low water, and containing a little more than one fourth of an acre; And whereas Wm. R. Aylett has a lien on said land by virtue of a deed of trust executed by R. E. Wynn and Fannie B. Wynn to Phillip Aylett to secure the payment of a bond for $600— due Wm. R. Aylett, said deed bearing date the 19th day of June, 1893, and being of record in the clerk's office of Essex Court Deed

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Book 57, page 134. Now, there, therefore, this deed witnesseth: That the said R. E. Wynn and Fannie B. Wynn for and in consideration of the sum of $300, to them in hand paid, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the said Weems Steamboat Company the tract of land above described, with general warranty of title, and the said Wm. R. Aylett doth hereby release his lien to so much of said land as is hereby conveyed. A right of way over the land of the said R. E. Wynn, and Fannie B. Wynn from the land hereby conveyed to Prince Street is hereby granted, and the parties of the first part reserve a right of way across the above mentioned tract of land to the present wharf, or to such other wharf as may be built thereon, and it is further understood that the party of the second part is to bear one-half of the expense of keeping up the line fence between them.

19 In testimony whereof, Witness the following signatures and seals this the 10th day of October, 1895.

R. E. WYNN. [SEAL.]
FANNIE B. WYNN. [SEAL.]
WM. R. AYLETT. [SEAL.]

VIRGINIA, *Essex County, To-wit:*

This day, Personally appeared before me, Thomas E. Blakey, a Notary Public, in and for the County of Essex, State of Virginia, in my county aforesaid, R. E. Wynn and Fannie B. Wynn, whose names are signed to the foregoing writing, bearing date the 10th day of October, 1895, and acknowledged the same to be their act and deed.

Given under my hand this 14th day of October, 1895.

THOMAS E. BLAKEY, *N. P.*

The right of way reserved to Fannie B. Wynn and R. E. Wynn on lines 13, 14, 15, and 16 of the second page of the above deed is hereby extinguished by the said R. E. Wynn and Fannie B. Wynn.

In testimony whereof, Witness the following signatures and seals this the 26th day of October, 1895.

R. E. WYNN. [SEAL.]
FANNIE B. WYNN. [SEAL.]

STATE OF VIRGINIA,
County of Essex, To-wit:

I, H. Southworth, Clerk of the County Court of Essex County, in the State of Virginia, do certify that R. E. Wynn and Fannie B. Wynn, his wife, whose names are signed to the writing above, bearing date on the 26th day of October, 1895, have acknowledged the same before me in my county aforesaid.

Given under my hand this 26th day of October, 1895.

H. SOUTHWORTH, *Clerk.*

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VIRGINIA:

In Essex County Court, Clerk's Office, January 3, 1896.

This deed was presented, and with the certificate annexed, and plat, admitted to record at 9 o'clock A. M.

Teste:

H. SOUTHWORTH, *Clerk.*

20 EXHIBIT E.

This Deed, Made and entered into this second day of November, in the year one thousand nine hundred and one, between Henry T. Douglas, Jr., and Ella T. Douglas, his wife, parties of the first part, an The Weems Steamboat Company, of Baltimore City; (a corporation) party of the second part.

Witnesseth, That for and in consideration of the sum of One thousand four hundred dollars ($1,400) to them in hand paid at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, the said Henry T. Douglas, Jr., and Ella T. Douglas, his wife, parties of the first part, as aforesaid, do hereby grant, bargain, sell and convey unto the said Weems Steamboat Company, party of the second part as aforesaid, all that certain lot or parcel of land situated and lying on the Rappahannock River, in Marshall District, Richmond County, Virginia, originally a part of the Pittsville tract, and bounded and described as follows: Beginning at a point in the centre of the first bend of the shore end of the wharf, adjacent to the land herein conveyed, known as "Wellford's Wharf," thence eastwardly along the low water line of the Rappahannock river to a point distant from the point of beginning in a direct line one hundred feet, thence at right angles to said direct line in a northerly direction two hundred and fifty feet, thence at right angles in a westerly direction three hundred and forty-nine feet, thence at right angle- in a southerly direction two hundred and fifty feet more — less to the low water mark of the Rappahannock River thence along said low water line in an easterly direction two hundred and fifty feet more or less to the point of beginning, containing two acres. The said Weems Steamboat Company, party of the second part, to have and to hold the said tract of land, together with the steamboat wharf thereto adjoining and extending into the Rappahannock River, known as "Wellford's Wharf," which said wharf is hereby conveyed as a part of the said lot or parcel of land, and also together with all rights, privileges and appurtenances to the said lot of land or the said wharf appertaining and belonging to it, successors and assigns forever, and the said parties of the first part hereby warrant generally the title to the said land and the wharf aforesaid hereinbefore mentioned and conveyed by this deed.

COPY BOUND

In testimony whereof, Witness the following signatures and seals this the day and year first above written.

HENRY T. DOUGLAS, JR. [SEAL.]
ELLA Y. DOUGLAS. [SEAL.]

Test:

HOWARD D. ADAMS.

21 STATE OF MARYLAND. *Baltimore City, ss:*

I hereby certify that on this sixth day of November, 1901, before me a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared, Henry T. Douglas and Ella T. Douglas, his wife, and each acknowledging the foregoing deed to be their respective act, as witness my hand and notarial seal.

[SEAL.] HOWARD D. ADAMS,
Notary Public.

Clerk's Office of the County Court of Richmond County, Virginia, November 7, 1901. The foregoing Deed bearing date second day of November, 1901, was this day received in the office aforesaid and together with certificate annexed admitted to record.

Teste:

J. B. RAINS, *Clerk.*

EXHIBIT F.

This Deed, Made this Fourth day of January, in the year eighteen hundred and ninety-two, by us, Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sydney H. Forbes, her husband, all of the City of Baltimore State of Maryland.

Witnesseth, That in consideration and fulfilment of a contract between us and The Weems Steamboat Company, of Baltimore City, a corporation duly incorporated, and also of one dollar, to us in hand paid, the receipt of which is hereby acknowledged, we, the said Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sydney H. Forbes, her husband, do grant unto the said The Weems Steamboat Company, of Baltimore City, its successors and assigns, the wharf on the Rappahannock River known as Sharp's or "Milton Wharf," in the County of Richmond, State of Virginia, lately used by the Weems Line of Steamers, together with the land adjacent thereto and used therewith, including the following described lot of ground; to-wit:

Beginning for the same at low water mark on the West or upper side of the wharf two feet East of Winslow and Company's canning house, thence along North-easterly between the wharf and said canning house to a stake two feet East of the South-east corner of the said canning house, thence North eighty-nine feet to stake in
22 line with the West side of Main Street and also in line with the River front of the verandah before Sharp's store, thence South-east to East fifty-six feet to a stake four feet West of said verandah before Sharp's store, thence in a straight line to low water

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mark of the River four feet East of the wharf, this line passes through Sharp's boat house, thence up the River to the place of beginning, being the same lot or parcel of ground and appurtenances, which, by deed dated 28th April, 1876, and recorded in Liber No. 32, folio 162, one of the Land Records of Richmond County, was conveyed by Claus L. Clausen and wife to Georgeanna Williams and Matilda S. Forbes.

Witness the following signatures and seals.

GEORGEANNA WILLIAMS. [SEAL.]
HENRY WILLIAMS. [SEAL.]
MATILDA S. FORBES. [SEAL.]
SYDNEY H. FORBES. [SEAL.]

Test:
WM. H. MASSON.

STATE OF MARYLAND,
City of Baltimore, to-wit:

I hereby certify that on this 4th day of January, 1892, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sydney H. Forbes, her husband, and acknowledged the foregoing Deed to be the act and deed of each of them, respectively.

In testimony whereof I have hereunto set my hand and affixed my Notarial Seal the day and year above written.

[SEAL.] WM. H. MASSON,
Notary Public.

Clerk's Office of the County Court of Richmond County, (Virginia) January 8, 1892.

The foregoing deed bearing date on the 4th day of January, 1892, was this day received in the office aforesaid, and together with the certificate annexed, admitted to record at 9 o'clock, A. M.

Teste:

L. D. WARNER, *Clerk.*

23 EXHIBIT G.

This Deed, Made this twenty-second day of January, 1903, by and between Miskel A. Carter and The Weems Steamboat Company of Baltimore city.

Witnesseth, That for valuable consideration the said Miskel A. Carter doth lease for the period of one year to the said Weems Steamboat Company of Baltimore City, the wharf on the Rappahannock River in the County of Richmond, known as Carter's Wharf, the said company during said lease to have the exclusive use and the possession of said wharf.

Provided, That the said Miskel A. Carter, reserves to himself the privilege of allowing to land at said Wharf sail vessels, provided they

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do not interfere with the use of the said Wharf by the Steamers of said Weems Steamboat Company of Baltimore City.

Witness my hand and seal this 22d day of January, 1903.

MISKEL A. CARTER. [SEAL.]

Witness present:
J. EDWARD CARTER.

EXHIBIT H.

This Deed, Made the 31st day of January, 1903, by and between J. I. Marks, and T. D. Marks, her husband, and The Weems Steamboat Company of Baltimore City.

Witnesseth, That for valuable consideration the said J. I. Marks and T. D. Marks, her husband, doth lease for the period of one year to the said Weems Steamboat Company of Baltimore City, the Wharf on the Rappahannock River in the County of Richmond, known as Naylor's Hole, the said Company during said lease to have the exclusive use and possession of said Wharf.

Provided, That the said J. I. Marks and T. D. Marks, her husband, reserve to themselves the privilege of allowing to land at said wharf sail vessels, provided they do not interfere with the use of the said wharf by the steamers of said Weems Steamboat Company of Baltimore City.

Witness my hand and seal this 22d day of January, 1903.

T. D. MARKS. [SEAL.]
J. I. MARKS. [SEAL.]

24 EXHIBIT I.

This Deed, Made the 21st day of January, 1903, by and between Robert L. Ware and The Weems Steamboat Company of Baltimore City.

Witnesseth, That for valuable consideration the said Robert L. Ware doth lease for the period of one year to the said Weems Steamboat Company of Baltimore City the wharf on the Rappahannock River, in the county of Essex, known as Ware's Wharf, the said company during said lease to have the exclusive use and possession of said wharf.

Provided, That the said Robert L. Ware reserves to himself the privilege of allowing to land at said wharf sail vessels, provided they do not interfere with the use of the said wharf by the steamers of said Weems Steamboat Company of Baltimore City.

Witness my hand and seal this 21st day of January, 1903.

ROB'T L. WARE. [SEAL.]

EXHIBIT J.

This Deed, Made the 21st day of January, 1903, by and between R. G. Neale and the Weems Steamboat Company of Baltimore City.

Witnesseth, That for valuable consideration the said R. G. Neale doth lease for the period of one year to the said Weems Steamboat

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Company of Baltimore City the wharf on the Rappahannock River, in the county of Essex, known as Bowler's Wharf, the said company during said lease to have the exclusive use and possession of said wharf.

Provided, That the said R. G. Neale reserves to himself the privilege of allowing to land at said wharf sail vessels, provided they do not interfere with the said use of the said wharf by the steamers of said Weems Steamboat Company of Baltimore City.

Witness my hand and seal this 21st day of January, 1903.

R. G. NEALE. [SEAL.]

25 EXHIBIT K.

This Deed, Made the first day of January, 1903, by and between B. L. Farinholt and The Weems Steamboat Company of Baltimore City.

Witnesseth, That for valuable consideration the said B. L. Farinholt doth lease for the period of one year to the said Weems Steamboat Company of Baltimore City the wharves on the Rappahannock River, in the counties of Middlesex and Lancaster, respectively, known as Bay Port and Monaskon, the said company during said lease to have exclusive use and possession of said wharves.

Provided, That the said B. L. Farinholt reserves to himself the privilege of allowing to land at said wharves sail vessels, provided they do not interfere with the use of the said wharves by the steamers of said Weems Steamboat Company of Baltimore City.

Witness *by* hand and seal this first day of January, 1903.

B. L. FARINHOLT. [SEAL.]

EXHIBIT L.

This Deed, Made the twenty-third (23d) day of January, 1903, by and between John H. Whealton and The Weems Steamboat Company of Baltimore City.

Witnesseth, That for valuable consideration the said John H. Whealton doth lease for the period of one year to the said Weems Steamboat Company of Baltimore City the wharf on the Rappahannock River, in the county of Richmond, known as Whealton's Wharf, the said company during said lease to have the exclusive use and possession of said wharf.

Provided, That the said John H. Whealton reserves to himself the privilege of allowing to land at said wharf sail vessels; provided, they do not interfere with the use of the said wharf by the steamers of said Weems Steamboat Company of Baltimore City.

Witness my hand and seal this 27th day of January, 1903.

WHEALTON PACKING CO. [SEAL.]
JNO. H. WHEALTON, *President.*

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26 EXHIBIT M.

Whereas, after a correspondence between the undersigned, Henry Williams, President of the Weems line of steamers, and A. B. Evans, during the years 1879 and 1880, in which the said Henry Williams offered upon the condition that the said A. B. Evans would build a wharf in the Rappahannock River so that the boats of the Weems line steamers could get to it, to send said boats to said wharf regularly; and further offered to pay said Evans ten per cent. on all freight and passenger fare taken from and landed on said wharf and furnish free transportation to said Evans, his wife, and his children and to his wharf agent, all of which will appear by the letters of said Williams in the possession of said Evans and by copies recently furnished said Williams by Evans; and

Whereas, in consideration of said offers, the said Evans did build the wharf referred to in said correspondence (which is Water View Wharf, in Middlesex County, Va.) in the year 1880; and from that year until the present time the said Williams has faithfully carried out and complied with his assurances and promises contained in his said letters; and

Whereas, for reasons that have been duly considered by the undersigned it is desired that there shall be a commutation of that clause giving free transportation to said Evans' children, and in lieu thereof that the said Williams shall allow and pay annually the sum of twenty-five dollars; and

Whereas, the contract between said Williams and Evans consists only of letters, etc., above referred to, bearing dates in the years 1879 and 1880; and it is mutually desired by the undersigned that the contract shall be drawn, signed and executed in a more regular and specific form.

Now This Agreement, Made this 31st day of January, 1901, between The Weems Steamboat Company of the City of *of* Baltimore, State of Maryland, of the one part, and A. B. Evans of the County of Middlesex, State of Virginia, of the other part:

Witnesseth, That in consideration of the facts recited in the foregoing part of this paper; and in further consideration that the Waterview Wharf is kept up in such condition that the steamers of said company can land and receive freight and passengers on and from the same, the said Weems Steamboat Company will send its steamers to said wharf regularly, and will pay to said Evans ten per cent. of all money received for freight and fare of passengers received from and landed on said wharf, and furnish free transportation or passes on its steamers for said Evans and for his wife and his
27 wharf agent; and will pay to said Evans annually the sum of twenty-five dollars in lieu of furnishing free transportation to said Evans' children on the steamers of said company.

And the said Evans (A. B.), party of the other part, doth hereby agree to keep up said wharf so that the boats of the said company can come to the same in consideration that the said steamers shall be sent regularly to said wharf, and that the said company shall pay (as

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above agreed to) ten per cent. of freight and passenger fare to and from said wharf and furnish free passes (for travel) to himself, his wife and wharf agent, and pay annually the sum of twenty-five dollars in lieu of free transportation to his children.

And It Is Further Agreed, That during the continuance of this contract that no steamers except those owned or controlled by The Weems Steamboat Company shall have the privilege of using said wharf without the consent and approval of the President of said company.

Witness the hands and seals of the parties hereto on the day and year aforesaid.

(Signed) HENRY WILLIAMS,
[SEAL.] *President of the Weems Steamboat Company of Baltimore City.*

(Signed) A. B. EVANS. [SEAL.]

Witness:
J. H. WILLIAMS.

EXHIBIT X.

Tidewater Democrat.

A. B. Latane,
Editor and Proprietor.

Entered at the Postoffice at Tappahannock, Va., as second class matter.

FRIDAY, *December* 19, 1902.

"A Card."

I have been informed by parties who have desired to make shipments to points on the Rappahannock river by the Business Men's Association new line (Steamer Tourist) that two or three wharf agents have announced that they will not permit freight consigned to their wharf to be housed in their warehouses. I hereby notify all parties concerned that the wharf agents have no choice in the
28 matter and are bound to serve the public with due care and diligence whether their freight comes over the Weems Line or by the Tourist. I guarantee to all parties as good service in this particular at all the wharves when they ship by the Tourist as when they ship by the Weems boats; and I hereby notify all wharf agents that they will be held to a strict accountability for any neglect of their duties. The majority of owners of wharves along the river have extended every courtesy to the new line. This card is for the benefit of the few who have undertaken to aid the Weems Steamboat Company to preserve a monopoly.

WM. D. CARTER,
President Business Men's Association of Fredericksburg.

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EXHIBIT T.

FREDERICKSBURG, VA., *Dec.* 6, 1902.

Mr. Henry Williams, President Weems Steamboat Company, Baltimore, Md.

DEAR SIR: I received you- note which was handed me by your Mr. W. D. Scott, and in which note you undertook to forbid the Steamer Tourist to land at wharves on the Rappahannock. Later your Mr. Fitzhugh called, and I told him we intended to land the boat, and we are doing so, and intend to continue until you can stop us by some legal means. We have tendered the wharfage, and shall continue to do so, and I hereby formally notify you as owner of Port Royal, Rappahannock, etc., wharves that we stand ready to pay you the usual and reasonable wharfage charges at any time, either by the trip, the week, or the month.

I also wish to call your attention to the fact that we are entitled to the services of the wharves when we pay for it, and shall see that freight handled by our boat is properly cared for, and our patrons and shippers protected. All we want are our legal rights, and these we shall contend for by every lawful method.

Please advise me of your pleasure as to when and to whom we shall pay the wharfage at your wharves. At the same time, please recall your orders to your agents to "stop the Tourist from landing if you can," and give them such instructions as to handling of the Tourist's freight as is proper under the law.

Yours truly, WM. D. CARTER.

29 EXHIBIT Z.

Certificate of Ownership of Vessel.

United States Customs Service, Port of Tappahannock, Va.

COLLECTOR'S OFFICE, *February* 7, 1903.

I hereby certify, that according to the records of this office, the Steamer called the Tourist, of Tappahannock, Va., tonnage 284 gross and 225 tons net, was enrolled at this office January 6, 1903. William D. Carter, of Fredericksburg, Va., sole owner, and there is not any mortgage or lien on record against said vessel in this office.

Given under my hand and seal of office this 7th day of February, 1903.

G. S. BUNDY,
Dep. Collector.

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Exhibit XX.

The United States of America:

Bill of Sale of Enrolled Vessel.

To all to whom these presents shall come, Greeting:

Know ye, that The Rock Creek Steamboat Company of Anne Arundel Co., State of Maryland, a body corporate, incorporated under the laws of the State of Maryland, *is* owner of the Steamer or vessel, called the Tourist, of the burden of two hundred and twenty-five tons or thereabout, for and in consideration of the sum of sixteen thousand dollars, lawful money of the United States of America, to it in hand paid, before the sealing and delivery of these presents, by Wm. Douglass Carter, of Fredericksburg, State of Va., the receipt whereof it does hereby acknowledge and is therewith fully satisfied, contented, and paid, *have* bargained and sold, and by these presents do- bargain and sell, unto the said Wm. Douglas Carter, executors, administrators, and assigns, the whole of the said steamer or vessel, together with the whole of the masks, bowsprit, sails, boats, anchors, machinery, cables, tackle, furniture, and all other necessaries thereunto appertaining and belonging; the certificate of the enrollment of which said steamer or vessel is as follows, viz.:

30 *Enrollment No.* 195.

Enrollment.

In conformity to Title I, "Regulation of Vessels in Domestic Commerce," of the Revised Statutes of the United States, George F. Jenkins, President, of Maynard, Md., having taken and subscribed the oath required by law, and having sworn that The Rock Creek Steamboat Company of Anne Arundel Co., State of Maryland, a body corporate, duly incorporated under the laws of the State of Maryland, are citizens of the United States, and the sole owners of the vessel called the Tourist of Baltimore, Md., whereof W. W. Rowles, citizen of the United States, is master, and that the said vessel was built in the year 1894, at *Uyock,* N. Y., as appears by P. E. No. 202, issued at Baltimore, Md., June 4, 1900, now cancelled, etc., and said enrollment having certified that the said vessel is a steamer built of wood; that she has one deck, no mast; plain head, round stern; that her length is 1.16 feet, her breadth 21.5 feet, her depth 6.5 feet, her height — feet; that she measures as follows:

Capacity under tonnage deck	103.18	tons
Capacity of inclosures on the upper deck, viz.:		
Cabin, 122.40; Ladies' Cabin, 18.77; H. S. Aft Deck, 39.99; total	181.16	tons
Gross Tonnage	284	tons
Total Deductions	59.25	tons
Net Tonnage	225	tons

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That the following described spaces, and no others, have been omitted, viz: ——; and said vessel has been duly enrolled at the Port of Baltimore.

Given under my hand and seal at the Port of Baltimore, in the district of Baltimore, this 21st day of June, in the year one thousand nine hundred and one.

C. W. RAFLIN,
Ass't Dep. Collector of Customs.

D. E. DIER,
Ass't Dep. Naval Officer.

To have and to hold the said Steamer Tourist and appurtenances thereunto belonging unto him the said Wm. Douglass Carter, his executors, administrators, and assigns, to the sole and only
31 proper use, benefit, and behoof of him, the said Wm. Douglass Carter, his executors, administrators, and assigns forever; and it the said The Rock Creek Steamboat Company of Anne Arundel County, State of Maryland, a body duly incorporated under the laws of Maryland, *have* and by these presents do- promise, covenant and agree, for itself, its successors, and administrators, to and with the said Wm. Douglass Carter, his heirs, executors, administrators, and assigns, to warrant and defend the said steamer Tourist of Baltimore, Md., and all the other before-mentioned appurtenances, against all and every person and persons whomsoever. And the said body corporate, The Rock Creek Steamboat Company of Anne Arundel County, State of Maryland, doth hereby constitute and appoint Thomas F. Bottomley to be its attorney, in its name, and as its *act* to acknowledge this bill of sale before any one legally authorized to take said acknowledgment.

In testimony whereof, The said Rock Creek Steamboat Company of Anne Arundel County, State of Maryland, has caused these presents to be executed by the hands of George F. Jenkins, its president; has caused its corporate seal to be hereunto affixed, this 27th day of December, in the year of our Lord one thousand nine hundred and two.

GEORGE F. JENKINS, *Pres.* [SEAL.]

Signed, sealed and delivered in presence of—

Witness:

RW. BOTTOMLEY.

THOS. F. BOTTOMLEY,
Sect. and Manager.

STATE OF MARYLAND, *City of Baltimore, ss:*

Be it known, that on this 26th day of December, 1902, personally appeared before me, Thos. F. Bottomley, the attorney named in the foregoing bill of sale, and by virtue and in pursuance of the authority conferred on him by the said body corporate, *and* acknowledged the within instrument to be its free act and deed.

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In testimony whereof, I have hereunto set my hand and seal this 26th day of December, A. D., 1903.

WM. H. MASSON,
Notary Public.

32 I, G. S. Bundy, Deputy Collector of the Port of Tappahannock, hereby certifies that the within is a true copy of the bill of sale of record in this office transferring the Steamer Tourist from the Rock Creek Steamboat Company to Wm. Douglass Carter, of Fredericksburg, Va.

G. S. BUNDY,
Dep. Collector of Customs, Port of Tappahannock, Va.

EXHIBIT YY.

Fence Across Wharf.

The Obstruction Removed and Warehouse Opened by Force.

Last Friday the steamer Tourist, en route to Urbanna, arrived at Port Royal wharf, where she had thirty-five passengers, freight and a horse and buggy to land. Purser Archer, of the steamer, to a representative of this paper made the following statement:

"When we arrived at the wharf we found that a fence had been built across it and the rails smeared with tar. I had a horse and buggy, other freight and 35 passengers to land. There were several ladies, and it was impossible to land with these conditions confronting us. I asked Mr. Askins, the agent, by whose orders that fence was put there, and he replied by the orders of President Williams, of the Weems line of steamers. Several passengers said: "Tear down the fence" and it was immediately done. Then another difficulty confronted us—the warehouse was locked, and it was impossible to land freight, but the passengers could get on the wharf, after which they had to pass by the side of the warehouse in a space of two feet, running great risk of falling in the water. There was no other course for me to pursue but to draw the staple, open the door and let the horse and buggy through, as, under the law, as public carriers, we are entitled to do. At all the wharves along the river controlled by the Weems Line every impediment possible is thrown in our way, but the people on the river are with us, and the Tourist is making her trips loaded with freight and passengers." Our representative also called on Mr. W. D. Scott, agent of the Weems Line, and asked for a statement concerning this affair. He said he knew nothing of the matter, except what was talked on the streets, and had no statement to make.

33 EXHIBIT ZZ.

People's Steamboat Line.

Steamer Tourist leaves Embrey's Wharf, Fredericksburg, with freight and passengers every Monday, Wednesday and Friday for Urbanna and all wharves between, at 11 A. M. Returning, leaves

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Urbanna, at 6 A. M., Tuesdays, Thursdays and Saturdays, arriving in Fredericksburg about 5 P. M. Consignments for express from Fredericksburg promptly transferred and forwarded same afternoon. Rate right. Time right. Service right.

WM. D. CARTER, *President.*

F. V. ARCHER, *Manager.*

People's Steamboat Line.

Pass St. Geo. R. Fitzhugh or his representative, one round trip, Fredericksburg to Urbanna and return, account Business Men's Association. Good only when countersigned by person using this pass, and who, in consideration of free passage, releases the carrier from liability in case of injury.

WM. D. CARTER, *President.*

Notice.

To the patrons of the People's Steamboat Line:

The heavy ice in the river Thursday night caused the breaking of the propeller of the Steamer Tourist, and the boat will be unable to make her regular trips until after going to Norfolk and having a new wheel put on.

The Tourist will make her trip down Monday, the 23d, and deliver freight and passengers. She will proceed on Tuesday to Norfolk, where she will be hauled out, and the new wheel put on. As it will take about a week to get the wheel made, it is probable that the boat will not resume her regular trips until about March 4.

WM. D. CARTER,
President "People's Steamboat Line."

34 EXHIBIT LL.

River Excursion.

The Steamer Tourist, will leave her dock in Fredericksburg at two o'clock Sunday afternoon, March 20, 1903, for an excursion trip down the river, returning to Fredericksburg about 6:30 P. M. Tickets fifty-cents, children under twelve years, half fare.

F. V. ARCHER,
Gen. Manager.

EXHIBIT OO.

A Card.

I take this occasion to thank the business men of Fredericksburg, both those who are members of the Business Men's Association and those who are not, for their cordial sympathy and support in the effort being made by the Business Men's Association of Fredericksburg to extend the trade and commerce of this city. I feel that,

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if anything, greater thanks are due to our friends and patrons along the Rappahannock River on both sides, and I hereby tender my respects and congratulations to the people of the Rappahannock valley on having better transportation facilities than they have hitherto enjoyed. In this connection I have to say that the People's Line is what its name would imply, and it will be at the service of the people as long as they show a disposition to have it run.

WILLIAM D. CARTER,
President Business Men's Association.

35 *Order to Show Cause Why Injunctions Should Not Be Granted.*

Entered and Filed April 16th, 1903.

In Equity.

THE WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, a Corporation Organized under and Pursuant to the Laws of the State of Maryland and Having its Principal Place of Business in the State of Maryland, Plaintiff,

versus

PEOPLE'S STEAMBOAT COMPANY, a Corporation Organized under and Pursuant to the Laws of Virginia, Having its Place of Business in the City of Fredericksburg, in Said State, and WILLIAM D. CARTER, A. W. EMBREY, and A. RANDOLPH HOWARD, Respectively President, Vice-President, and Treasurer of Said People's Steamboat Company, and the Said WILLIAM D. CARTER, —— CRADDOCK, and F. V. ARCHER, Defendants.

Upon reading the verified bill of complaint, with the exhibits therewith, this day filed;

It is ordered that the defendants, in said bill named, do show cause before this court, at its court room in the city of Richmond, Virginia, on Thursday, the 30th day of April, 1903, at 10 o'clock A. M., why the temporary restraining order, in said bill prayed for, should not be granted, and the injunction asked issue; and the said defendants will, on or before Monday, the 27th day of April, 1903, deliver to St. George R. Fitzhugh, Esq., complainant's solicitor, any affidavits desired to be read by them upon the hearing of said motion.

It is further ordered that a copy of this order, together with a copy of said bill of complaint, be forthwith served upon the said several defendants, respectively.

EDMUND WADDILL, JR.,
United States Judge.

Richmond, Virginia, April 16th, 1903.

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36 *Chancery Subpœna.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

The President of the United States of America to People's Steamboat Company, William D. Carter, president, A. W. Embrey, vice-president, A. Randolph Howard, treasurer, William D. Carter, —— Craddock, F. V. Archer, Greeting:

We command you, and every one of you, that you appear before our judges of our Circuit Court of the United States of America for the Eastern District of Virginia, at the Court Room in the Custom House in the City of Richmond, in said District, on the 1st Monday in the month of June next, to answer the bill of complaint of The Weems Steamboat Company of Baltimore City, a body corporate, this day filed in the Clerk's Office of said court, in said City of Richmond, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Eastern District of Virginia to execute:

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond aforesaid, this 16th day of April, in the year of our Lord one thousand nine hundred and three, and of our Independence the 127th.

[SEAL OF COURT.] M. F. PLEASANTS, *Clerk,*
By JOSEPH P. BRADY, *Dep'y Clerk.*

MEMORANDUM.—The above named defendants are notified that unless they enter their appearance in the Clerk's Office of said court, at Richmond, aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

M. F. PLEASANTS, *Clerk,*
By JOSEPH P. BRADY, *D. C.*

37 *Marshal's Return.*

Executed this 17th day of April, 1903, by delivering to Ellerbe W. Carter, son of William D. Carter, a person over sixteen years of age at the residence of William D. Carter, in the City of Fredericksburg, Virginia, in the Eastern District of Virginia, a copy of this writ, together with a certified copy of the order to show cause, and a copy of the bill of complaint, the said William D. Carter, not being found at his usual place of business or abode, it being said that he was now in the State of Texas, the said William D. Carter being president of the People's Steamboat Company.

MORGAN TREAT,
U. S. Marshal,
By JOSEPH F. GLOVER,
Deputy U. S. Marshal.

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And Further executed this 17th day of April, 1903, by delivering in person to A. W. Embrey and A. Randolph Howard, respectively, vice-president and treasurer of the People's Steamboat Company at their place of business in the City of Fredericksburg, Virginia, in the Eastern District of Virginia, a copy of this writ, together with a certified copy of the order to show cause and a copy of the bill of complaint.

MORGAN TREAT,
U. S. Marshal,
By JOSEPH F. GLOVER,
Deputy U. S. Marshal.

And further executed this 17th day of April, 1903, by delivering in person to F. V. Archer and A. E. Craddock, at the wharf of the People's Steamboat Company, at the City of Fredericksburg, Virginia, in the Eastern District of Virginia, a copy of this writ, together with a certified copy of the order to show cause and a copy of the bill of complaint.

MORGAN TREAT,
U. S. Marshal,
By JOSEPH F. GLOVER,
Deputy U. S. Marshal.

38 *Joint and Separate Answer of People's Steamboat Company, William D. Carter, President, A. W. Embrey, Vice-President, A. Randolph Howard, Treasurer, William D. Carter and F. V. Archer.*

Filed April 30th, 1903.

In the Circuit Court of the United States for The Eastern District of Virginia.

THE WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY (a Body Corporate), Plaintiff,
vs.
PEOPLE'S STEAMBOAT COMPANY, WM. D. CARTER, President, A. W. EMBREY, Vice-President, A. RANDOLPH HOWARD, Treasurer, WILLIAM D. CARTER, —— CRADDOCK, F. V. ARCHER, Defendants.

To the Honorable The Judges of the Circuit Court of the United States in and for the Eastern District of Virginia:

The aforesaid respondents most respectfully crave leave to file this their answer to the bill of complaint exhibited against them and another in the above entitled cause:

The joint, and separate answer of People's Steamboat Company, a corporation chartered under the laws of the State of Virginia, and having its principal place of business in the City of Fredericksburg, Va., William D. Carter, president of said company, A. W. Embrey, vice-president of said company, and A. Randolph Howard,

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treasurer of said company, and William D. Carter and F. V. Archer to a bill of complaint exhibited against them and —— Craddock in the Circuit Court of the United States for the Eastern District of Virginia, by The Weems Steamboat Company, a corporation organized and chartered under the laws of the State of Maryland, and having its principal place of business in the City of Baltimore:

These respondents admit that they are citizens of the Eastern District of the State of Virginia, and that the said The Weems
39 Steamboat Company is a foreign corporation, chartered under the laws of Maryland, but deny that the said complainant has any right to transact business in this State, or to maintain this suit, until it shall have complied with the requirements of section 3 of an Act passed by the Legislature of Virginia and approved March 1st, 1898, and set forth at length in the "Acts of Assembly" of Virginia, 1897 & '98 at page *681*, and until such compliance be made to appear by its said bill of complaint.

These respondents deny that the said The Weems Steamboat Company is the fee simple owner of the following wharves on the Rappahannock River, in the State of Virginia, viz.: Port Royal Wharf in the County of Caroline; Leedstown Wharf in the County of Westmoreland; Tappahannock Wharf in the County of Essex; Welford's Wharf in the County of Richmond, and Sharp's Wharf in the County of Richmond; these respondents further deny that the said The Weems Steamboat Company is the fee simple owner of the lands upon which said wharves and the piers constituting part of said wharves are built.

These respondents are not informed as to why or how color of title to any of these said wharves may have been acquired by the said complainant, but these respondents deny that the complainant and its predecessors in title have been in sole and exclusive possession of the said wharves, or of either, or any of the said wharves and piers for more than fifteen years, or for any other period of time within the fifteen years last past.

These respondents deny that the said complainant acquired the said wharves, and the exclusive right to use the said wharves and piers from the parties whose deeds are filed as exhibits with the bill of the complainant; and further deny that complainant acquired any ground for the purpose of erecting and maintaining thereon wharves and piers in the Rappahannock River for the use of the Steamboats of the Complainant, and to the exclusion of the public generally, the said The Weems Steamboat Company being a common carrier, and unable to discriminate as to who or what classes of the public it would enroll among its patrons. And these respondents aver that the Rappahannock River is a navigable river under the laws of Congress, and that the piers at the wharves, and at each and every one of the wharves aforesaid, are located in the navigable water of the said Rappahannock River.

These respondents further deny that the grantors in the deeds filed by the complainant with its bill were able to convey to the said The Weems Steamboat Company any absolute or exclusive right to the said wharves respectively, or to any or either of them, by

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reason of the fact that long prior to the date of the con-
40 veyances filed as exhibits A, B, C, D, E, and F with the complainant's bill, the wharves in question had been in general use by the public as shipping places, and by long use, and by consent of the former owners, who were accustomed to exact and and receive wharfage or toll from vessels using their said wharves, the said former owners had established their legal status as wharfingers, and had made their said wharves public wharves; and these respondents aver that each of said wharves is the only wharf or facility for shipping in the locality where it is located; that at each of said wharves is located a town or large village, all the inhabitants whereof, as well as the inhabitants of large sections of thickly populated country adjacent to the said towns have no other means of transportation accessible except by the said wharves, and that The Weems Steamboat Company is trying to perpetuate a monopoly.

These respondents aver that public roads and highways open to public travel, lead to the shore end of each and every one of the aforesaid five wharves; that at Sharp's Wharf there are numerous places of business built adjoining, and upon, the wharf and pier head; that the public generally frequent the wharf and the pier head, and boats of all classes and kinds habitually land at the wharf and at the pier head; that it is a place of public trading, buying and selling, and carrying on business; that artesian wells have been sunk in the bed of the Rappahannock River under and adjacent to structures built against and adjoining the pier head and wharf itself, and that some persons have had their homes, and not only worked, but had their boarding and lodging places in the buildings built at the said pier head, and forming a part of the said wharf.

These respondents are not informed as to the exact location of the plat of ground mentioned and described in "Exhibit F" with the Complainant's Bill, and do not know whether or not it embraces the land about the shore end of the said wharf, and call for strict proof as to this. But these respondents aver that even if the said conveyance does convey title to the ground about the shore end of the said Sharp's Wharf, yet the public have for many years been encouraged to use the said ground as a pass way, and that the said ground in fact forms a part of the public street or road way in the village of Sharp's; and people from the shore have long been encouraged to pass, and to use the said ground and the said wharf, and persons living or doing business at the channel end of the said wharf have freely passed to and from the shore at will, and with their freight and property of all kinds. See page 8 (paragraph at bottom of page) of Complainant's Bill.

41 These respondents are not informed as to the cost of the acquisition of the said wharves, and calls for strict proof of this allegation. But these respondents deny that the average annual cost of keeping the said wharves in repair is anything like five or ten thousand dollars, and call for strict proof of this allegation. These respondents are informed, and believe, and therefore aver, that the cost of building a wharf similar to the Tappahannock Wharf is approximately twenty-five hundred dollars, and Port Royal

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Wharf and Leedstown Wharf are very much smaller, shorter, and cheaper to construct than the wharf at Tappahannock.

These respondents deny that the said The Weems Steamboat Company is the lessee for valuable consideration of the following wharves on the Rappahannock River, and of the land on which the said wharves are built, viz:

Carter's Wharf, in Richmond County;
Naylor's Hold, in Richmond County;
Ware's Wharf, in Essex County;
Bowler's Wharf, in Essex County;
Bayport, in Middlesex County;
Monaskon, in Lancaster County;
Whealton, in Richmond County;
Water View, in Middlesex County;

or of either or any of the last mentioned eight wharves, or of the ground on which they are built; these respondents are willing to admit that the complainant, The Weems Steamboat Company and its predecessors have for many years been in the habit of using the said eight wharves, and paying for said use. But these respondents since they have been interested in the operation of the steamer Tourist on the Rappahannock River have also been in the habit of using said wharves and have paid wharfage for such use of said wharves.

See thirteen wharfage receipts filed herewith marked "Exhibit Wharfage," and prayed to be read as a part of this answer.

And many other parties and the public generally have been using the said wharves ever since they were first constructed, and are continuing to use the said wharves, wherefore these respondents deny that the use of the said wharves by the complainant or its predecessors has ever, at any time, or for any length of time whatever, been exclusive. And these respondents call for strict proof of this allegation of the said bill of complaint.

42 These respondents deny that the lessors in the leases filed as exhibits with the complainant's bill ever had the right or the power to make to The Weems Steamboat Company any exclusive lease, or privilege in connection with either or any of their said wharves, and deny that the said lessors own the said wharves in any such sense, because the piers of each and every one of the said wharves are in the navigable waters of the Rappahannock river; because the said wharves were each and every one built for purposes of commerce; and have long been used for such purposes, and because the proprietors of the said wharves have habitually charged and collected wharfage from vessels using their said wharves; and because each of the said wharves is at the end of or situated immediately adjoining, and upon, some public road, street, or thoroughfare. And in the cases of Bowler's Wharf, and Whealton, because upon and adjoining the pier heads at each of these wharves are maintained places of public barter and sale, where people have long been accustomed to come, by boat, and by land over the wharf from the shore, for the purpose of transacting business, and have bought sold, and transacted business constantly at the said pier heads, and

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upon them, and on and in the structures adjoining thereto, and still continue to do so.

These respondents cheerfully admit that the complainant and its predecessors have been for many years engaged and are now engaged, in the business of operating a line of steamboats plying on the Rappahannock river as carrier of freight and passengers; respondents also admit that the complainant has used the said wharves in the progress of its said business.

These respondents also admit the presence in the code of Virginia of section 998.

These respondents are prepared neither to admit nor to deny the allegation of the complainant's bill which states that "none of the wharves owned or leased by it" obstruct the navigation of the water course. These respondents are not informed as to whether or not the laws of Congress relating to the construction and maintenance of the said several wharves have been fully complied with, and the question being one under the control of one of the departments of the National Government, and beyond the knowledge of either of these respondents, they call for strict proof of the said allegation.

These respondents deny that none of the said wharves encroach upon any public landing, and prevent the free use thereof, and aver that both at Port Royal, and at Tappahannock, the piers are so constructed as to materially interfere with the construction or use of wharves or piers at public landings adjacent to the wharves claimed by the complainant in its bill.

43 These respondents deny that any of the wharves named in the bill of complaint are, or ever were, private wharves, and calls for strict proof of that allegation, and for production of the Legislative authority for the construction of the wharves claimed by the complainant.

These respondents admit that in the month of November, 1902, a steamboat called the "Tourist" was started to run between Fredericksburg and Urbanna on the Rappahannock river, and that it did stop at any and all wharves on the said river between Fredericksburg and Urbanna, as occasion required, and in so doing stopped from time to time with freight and passengers at the wharves named in the complainant's bill. Respondents deny that the stopping of the steamer "Tourist" at the said wharves, or at many other wharves (some of which other wharves were frequently, and still others constantly, ignored and passed by the boats of the Weems Steamboat Company), was without authority or right, but respondents submit that they had a perfect right to navigate the Rappahannock river, and had a perfect right to stop at any and all wharves on the said river where public commerce and traffic was carried on; and these respondents aver that they were entirely willing to pay the usual and customary wharfage at all the wharves they touched at with their said steamer Tourist, and have either paid, or made tender of the amount of the wharfage, for the use of every wharf which they have ever landed at. And these respondents deny the right of the complainant to forbid them from navigating the Rappahannock river, and deny the right of the complainant to forbid the landing of the

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said Steamer Tourist at any pierhead erected in the navigable waters of the Rappahannock river.

And in this connection these respondents aver that the accounts of freight and passengers carried by the said Steamer "Tourist" are carefully and accurately kept, as is also the amount of money received for carrying each and every passenger, and each and every package of freight. And these respondents aver that the amount of wharfage due at all the wharves over which the complainant claimed to have control, figured at ten per cent. of the gross receipts for passengers and freight handled at each of said wharves, was tendered to the wharf agents at the said wharves respectively, and was refused by some of the said wharf agents; and these respondents aver that the pay envelopes accompanied by a full statement of the business at each of said wharves, and of the amount of wharfage, for each wharf separately, and with the exact amount of change, was sent by express to Henry Williams, at the Weems Steamboat Company's office in the City of Baltimore, and was delivered to the said The Weems
44 Steamboat Company, the complainant. And these respondents aver that the respondent, People's Steamboat Company, has always been, and is now, ready to pay any reasonable wharfage which may be reasonable and customary, or which may be decreed to be proper, and hold itself ready at all times to do what is reasonable and right in the matter of paying all wharfage charges which may now be, or may hereafter become, due from it.

See receipt of Adams Express Company for package of money addressed to H. Williams filed herewith marked Exhibit EX and prayed to be read as a part of this answer. Respondents admit that when the steamer "Tourist" was first put on the Rappahannock river, it was controlled by William D. Carter; respondents further admit that the Business Men's Association of Fredericksburg, in order to benefit and promote the commerce of their city approved of the starting of the said steamer, and appointed a committee to aid in forming a company to continuously operate the said line, and that the said association, by a practically unanimous vote, promised to the committee, and to the company they were requested to organize, the aid and support of the association by all such lawful means as might be used by a voluntary and unincorporated company without the assumption of any pecuniary liability whatever.

The respondent William D. Carter admits that in the month of November, 1902, W. D. Scott, the local agent of the Weems Steamboat Company came on board the Steamer Tourist while the said Steamer was lying at its own dock in the City of Fredericksburg, and showed the said Carter a letter signed "Henry Williams, President of The Weems Steamboat Company" and directed to Wm. D. Carter, and R. W. Rowles. The respondent William D. Carter avers that the letter was couched in language aggressive and dictatorial, and was in words a threat that if the Steamer Tourist again landed at any wharf which was owned or leased by the Weems Steamboat Company, suit would forthwith be brought. The said W. D. Scott asked for the said letter to show it to R. W. Rowles and carried it away with him.

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These respondents admit that the agent of The Weems Steamboat Company forbad the landing of freight and passengers at Port Royal, and admits that such action on the part of the said agent was caused by instructions written and signed by Henry Williams as President of The Weems Steamboat Company, a copy of which instructions was sent by the said Henry Williams to many, and your respondents believe, to all, of the agents of the said The Weems Steamboat Company along the Rappahannock river, the purport of the said instructions being an order to said agents to refuse to catch the lines for the Steamer Tourist, to obstruct her in every way in their power, and to prevent her landing if they could.

45 These respondents admit that pursuant to instructions as aforesaid, one Askins, agent of The Weems Steamboat Company at Port Royal, was accustomed to lock up the house built upon the pier head at said wharf whenever the Steamer Tourist approached the said wharf, although the house upon the said pier head was so built as to form both a ware house, and a covered passage way for a part of the distance from the pier head towards the shore end of the wharf, and the passage through the said warehouse was the regular pass way for all who went and came upon the said wharf before the Steamer Tourist began to stop at the said wharf. Respondents aver that wishing to avoid all difficulty, and believing that the imposition would soon cease if patiently borne for a little time, they made use of a narrow pass way around said house, which pass way was irregular, and not intended to serve as a place for patrons of the said wharf to walk. But the said Askins fenced up the said narrow space, and when it was broken down by some one, rebuilt it and on the 18th day of December, bolted iron rods across the said fence, and to the house, and smeared the obstruction with a thick coat of coal tar, in an effort to prevent a party of about thirty citizens who wished to take the Steamer Tourist to Fredericksburg, from reaching the said boat. These respondents aver that after approaching the said obstruction, and in some cases, having the tar smeared upon their clothing, the party retired, crossed the Rappahannock in a public ferry boat which lands immediately above the shore end of the said wharf, and took the Steamer Tourist at Port Conway, a wharf on the opposite side of the Rappahannock from Port Royal.

These respondents deny that any persons in charge of the Steamer Tourist used any force or violence whatever, or indulged in any threats or disorder of any kind. These respondents are not responsible for any newspapers interviews, and deny that any such articles have any legal significance or are evidence of anything, in a Court of law, or equity, in connection with this case.

These respondents admit that on the 19th day of December, when the party who had gone to Fredericksburg the day before upon the Steamer Tourist returned and found the obstruction still upon the wharf, and found Askins present upon the pier head, and refusing to unlock the warehouse which was built across the wharf as aforesaid (Asking being the agent for the Weems Steamboat Company, and in charge of the said wharf, and having first been politely requested to open the doors to permit of the passage to the shore of

some thirty people who were then upon the pier head, as well as the passage of a horse and buggy which had been landed upon
46 the said pier head from the Steamer Tourist), some of the passengers who had come from the steamer proceeded to break down the obstruction, and to knock off the iron bars with an axe, which proceeding was done good naturedly, but with an evident determination on the part of the citizens to suffer no more such trifling.

And these respondents admit that one of the employees of the People's Steamboat Company pried off a three-inch weather strip and unfastened the warehouse door, and opened the said door, and opened the doors at the other end of the passage way by removing a bar, and permitted the persons who wished to go ashore, also the horse and buggy, to pass through. And these respondents deny that it is impossible, or even difficult, for The Weems Steamboat Company to find the name, the residence or the whereabouts of any of the parties whom the said complainant alleges are trespassing upon its property, and aver that at the time aforesaid at Port Royal, Charles Askins, the agent and wharfinger of the Weems Steamboat Company, was present, and in close proximity to every one on the pier head, and that A. F. Turner, the Mayor of Port Royal and *ex officio* a Justice of the Peace under the laws of Virginia was also upon the pier head, and would have acted in his official capacity had there been any occasion requiring such action.

These respondents admit that the People's Steamboat Company was regularly chartered as alleged in the complainant's bill, and admit that the People's Steamboat Company has been operating the Steamer Tourist on the Rappahannock river, and that said company is still operating the said steamer on said river, and that said steamer Tourist stops at any wharves on the river where its patrons request or require the said boat to be stopped, and that it receives and discharges freight and passengers at such wharves.

But these respondents deny that in stopping at the said wharves as aforesaid, or in navigating the waters of the said river, any of these respondents are guilty of any invasion of any of the rights of the complainant, and further deny that they have in any way, directly or indirectly, interfered with the rights, property, or franchises of the complainant, or hindered or impeded it in any way in the conduct of the business of the said complainant.

These respondents deny that they l used any force or violence, or indulged in any threats, but aver ..... all such conduct that has occurred, if any, is due to attempts on the part of the employees of the complainant to interfere with the rights of citizens who are and who were in no way connected with these respondents, or any of them.

47 And the respondent, William D. Carter, emphatically denies that he has counselled the use of force by any parties, but admits that he has advised parties who asked him professionally as to their rights in the premises that they had as much right to remove an obstruction from a public wharf as they had from a public road, and had the same right of way over any public wharf, and the

same right to meet force with force if they should be forcibly interfered with, in one case as in another.

These respondents deny that they have taken possession forcibly or otherwise, of any cars, or of any other appliances of the complainant, and call for strict proof of that allegation.

The respondent William D. Carter denies that he has offered to indemnify any parties whatever against the consequences of any unlawful acts whatever, or has counselled the use of force, except in meeting force, should the agents and employees of the complainant undertake to carry out the instructions given them to forcibly prevent the landing of the steamer Tourist, which instructions these respondents are informed, believe and therefore aver, were given to the wharf agents of the complainant by Henry Williams, styling himself president of The Weems Steamboat Company.

These respondents deny that they are damaging the complainant to any extent whatever, or are in any way interfering with the operation of the complainant.

These respondents aver that upwards of two years before the Steamer Tourist was brought into the Rappahannock river, The Business Men's Association of Fredericksburg, Virginia, and many citizens of the counties along the Rappahannock river earnestly besought Mr. Henry Williams, as the party controlling the Weems Line Steamers, to place in effect upon the upper part of the Rappahannock, a schedule which would give to the people along the upper part of the river a boat that would pass their wharves with some approach to regularity, and in day light, and which would bring persons from nearby wharves to Fredericksburg, and take them back to their own wharves without compelling them to spend a night on the boat each way on such a trip. But after much temporizing, Mr. Williams gave a positive refusal to furnish the transportation asked for; that he informed the association that the schedule could not be run unless a special boat, costing many thousands of dollars to build, were built to make the time asked for; and that even if the schedule were practicable, then that there was no business upon the upper end of the river to justify and support a boat operated upon such a schedule; and Wm. D. Scott, the local agent of the Weems Steamboat Company at Fredericksburg emphatically stated
48 the same thing, and said further that were it not for the mail contracts, Mr. Williams would not operate his boats above Tappahannock at all. Wherefore these respondents deny that it is possible for them to have damaged the complainant in any way, because, with years of experience to guide him, the President of The Weems Steamboat Company, and its agents upon the ground, most positively declared that there was practically no business for their boats upon the part of the river on which The People's Steamboat Company does by far the larger part of all the business it has.

These respondents deny that the matter in dispute exceeds two thousand dollars, as the whole and only legal claim which the complainant could make against the respondents, or any of them would be a demand for wharfage against the People's Steamboat Company, and that has been tendered time and again, and respondents are ready at any time to make good any wharfage they may owe.

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These respondents deny that it has been the fixed and invariable policy of the complainant and of its predecessors to forbid the use of its wharves for any purpose except for the receipt and discharge of freight and passengers for its boats.

These respondents admit the exceptions alluded to in the said bill in favor of said boats, and the acceptance by the complainant of wharfage from said boats.

These respondents further aver that not only sail vessels, but steam craft not owned by the complainant, or controlled by them, or their predecessors have frequently, and from time to time been permitted to make use of the said wharves which the complainant claims to own in fee.

These respondents deny that the public in all the aforesaid counties in which the complainant owns or controls wharves have overawed the complainant's agents, and deny that they or the public have done so at all or in any county, and call for strict proof of that allegation. And these respondents say that even were the allegation true—which these respondents emphatically deny (for the best of feeling between the wharf agents and the public generally prevails from one end of the Rappahannock to the other,—these respondents are not responsible for the conduct of the public. And these respondents are informed, and believe, and therefor aver, that the real grievance entertained by the Weems Steamboat Company is that very many of the citizens along the river who formerly made the journey to Fredericksburg and to Richmond through the country, by wagon, rather than be "held up" for two nights on the boat in a trip of forty or sixty miles and back, have, since the Tourist has been making her regular run on the Rappahannock, fallen
49 into the habit of going to Fredericksburg by the said Steamer Tourist, and when they wished to visit Richmond, of taking the train from Fredericksburg; and the few who formerly travelled by the boat rather than take the long drive through the country, often in bad weather and over heavy and difficult roads, have seized the opportunity to get a quicker and more satisfactorily trip than by spending two nights on the Weems Line boat, and therefore they travel by the boat which is making the run originally mapped out by the Business Men's Association of Fredericksburg, and approved by a large number of the people of the counties along the Rappahannock.

These respondents deny that the complainant has no plain and adequate remedy at law for any of the injuries complained of in its bill of complaint.

These respondents deny that the People's Steamboat Company is an insolvent corporation, and charge that that allegation in the complainant's bill is false and libelous, and call for strict proof of the same.

These respondents deny all equity in the complainant's bill, and charge that the complainant has no just cause of complaint against them or any of these respondents.

These respondents further deny every allegation of the said bill not specifically admitted in this answer, and call for strict proof of

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every such allegation; and these respondents further pray that they may have the benefit of any and all just exceptions to the said bill which may be raised by this their said answer as fully as though the said exceptions had been raised by plea or demurrer.

These respondents further aver that they are, and always have been, ready to do equity in regard to the matters concerning which they and the complainant are at variance, and if these respondents have in any particular mistaken their legal and equitable rights in the premises, they are ready to cheerfully comply with any equitable terms which this honorable court may see fit to impose upon them, or upon any of these respondents.

These respondents further pray that although their answer under oath has been waived by the complainant in its bill, yet that their answer verified by the oaths of certain of the respondents as appears from the said answer, may be received, and that the said answer may at least be given the force and effect of an affidavit by each of the respondents who have sworn thereto.

50 And now, having fully answered all the allegations of the complainant's bill, these respondents pray to be hence dismissed with their reasonable costs; and as in duty bound, &c.

PEOPLE'S STEAMBOAT COMPANY,
By WM. D. CARTER, *President.*

A. RANDOLPH HOWARD,
Treasurer and (acting) Secretary.

A. W. EMBREY, *Vice-President.*

[Seal of People's Steamboat Company.]

A. RANDOLPH HOWARD, *Treasurer.*
WM. D. CARTER.
F. V. ARCHER.

ALVIN T. EMBREY, *p. d.*

VIRGINIA,
Corporation of Fredericksburg, To wit:

I, George W. Shepherd, *Jr.*, a notary public in and for the corporation of Fredericksburg, State of Virginia, do hereby certify that William D. Carter, and A. Randolph Howard, whose names are signed to the foregoing answer personally appeared before me in my said corporation, and each made oath that the statements contained in the said answer are true, to the best of their knowledge and belief.

Given under my hand and notarial seal in my said corporation of Fredericksburg, State of Virginia, this 25th day of April, 1903.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

Commission expires Sept. 28, 1903.

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VIRGINIA,
Corporation of Fredericksburg, To-wit:

I, Geo. W. Shepherd, Jr., a Notary Public in and for the corporation of Fredericksburg, State of Virginia, do hereby certify that F. V. Archer, whose name is signed to the foregoing answer personally appeared before me in my said corporation and made oath that the statements contained in the foregoing answer are true to the best of his knowledge and belief.

51 Given under my hand and notarial seal in my said corporation of Fredericksburg, State of Virginia, this 25th day of April, 1903.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

Commission expires Sept. 28, 1903.

EXHIBIT WHARFAGE.

Filed with Answer of Respondents.

1.70 JAN. 20, 1903.

Received from People's Steamboat Line
One and 70/100.....Dollars,
in full for wharfage to Jan. 1/03 at Carters.

J. E. CARTER.

$1.12 JAN. 20, 1903.

Received from People's Steamboat Line
One and 12/100.....Dollars,
in full for wharfage to Jan. 1/03 at Naylors.

T. D. MARKS.

$ .92/100 DEC. 23RD, 1902.

Received from People's Steamboat Line
Ninety-two cents.....,
in full of wharfage to Dec. 15/02 at Naylors.

T. D. MARKS.

$ .95 JAN. 20, 1903.

Received from People's Steamboat Line
Ninety-five cents.....,
in full for wharfage to Jan. 1/03 at Wares.

W. L. WARE.

$ .60/100 DEC. 23RD, 1902.

Received from People's Steamboat Line
Sixty cents.....,
in full for wharfage to Dec. 15/02 at Wares.

W. L. WARE.

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52 $1.23 JAN. 20, 1903.

Received from People's Steamboat Line
One and 23/100.....Dollars,
in full for wharfage to Jan. 1/03 at Bowlers.

R. G. NEALE,
Per FISHER.

$. 79/100 DEC. 23RD, 1902.

Received from People's Steamboat Line.
Seventy-nine cents.....
in full for wharfage to Dec. 15/02 at Bowlers.

R. G. NEALE,
Per W. W. N.

$5.13 JAN. 10, 1903.

Received from People's Steamboat Line
Five and 13/100.....Dollars,
in full for wharfage to Jan. 1/03 at Bay Port.

R. H. BLAND.

$ .98/100 DEC. 23RD, 1902.

Received from People's Steamboat Line
Ninety-eight cents.....
in full for wharfage to Dec. 15/02 at Bay Port.

R. H. BLAND, *Agt.*

$ .66. JAN. 20, 1903.

Received from People's Steamboat Line
Sixty-six cents.....
in full for wharfage to Jan. 1/03 at Monaskon.

B. L. FARINHOLT,
Per OPIE CLARK.

$ .50/100 DEC. 23RD, 1902.

Received from People's Steamboat Line
Fifty Cents.....
in full for wharfage to Dec. 15/02 at Monaskon.

B. L. FARINHOLT,
Per OPIE CLARK.

53 $1.25. DEC. 23RD, 1902.

Received from People's Steamboat Line
One .....25/100 Dollars,
in full wharfage to Dec. 15/02, at Whealtons.

J. H. WHEALTON,
Per WIND.

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$1.91. JAN. 20, 1903.

Received from People's Steamboat Line
One and 91/100.....Dollars,
in full for wharfage to Jan. 1/03 at Whealtons.

J. H. WHEALTON,
Per WIND.

EXHIBIT X.

Filed with Answer of Respondents.

Read the mutual conditions of this contract.
To which the shipper agrees by accepting this receipt containing the same.

180 Adams Express Company.

(Not Negotiable) FREDERICKSBURG, VA., 1/28, 1903.

Received of W. D. Carter One Pk. Valued at $35.00
Marked H. Williams, Balto., Md.

Which it is mutually agreed is to be forwarded to our agency nearest or most convenient to destination only, and there delivered to other parties to complete the transportation.

The care to be exercised in transporting property, and the reasonable compensation for its carriage, depend largely on its nature and value, and the company's charges for forwarding are proportioned to the value of the property delivered to it to be forwarded and to some extent based on that value, which is an important element in fixing its charges.

It is part of the consideration of this contract, and it is agreed, that the said Express Company are forwarders only, and are not to be held liable or responsible for any loss or damage to said
54 property while being conveyed by the carriers to whom the same may be by said express company entrusted, or arising from the dangers of railroads, ocean or river navigation, steam, fire, in stores, depots, or in transit, leakage, breakage, or from any cause whatever, unless, in every case the same be proved to have occurred from the fraud or gross negligence of said express company, or their servants; nor in any event, shall the holder thereof demand beyond the sum of fifty dollars, at which the above property forwarded is hereby valued, unless otherwise herein expressed, or unless specially insured by them, and so specified in this receipt, which insurance shall constitute the limit of the liability of the Adams Express Company

And if the same is entrusted or delivered to any other Express Company or agent (which said Adams Express Company are hereby authorized to do) such company or person so selected shall be regarded exclusively as the agent of the shipper or owner, and, as such, alone liable, and the Adams Express Company shall not be, in any

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event, responsible for the negligence or non-performance of any such company or person; and the shipper and owner hereby severally agree that all the stipulations and conditi ns in this receipt contained, shall extend to and inure to the benefit of each and every company or person to whom the Adams Express Company may entrust or deliver the above described property for transportation, and shall define and limit the liability therefor of such other company or person. It being understood that this company relies upon the various railroads and steamboat lines of the country for its means of forwarding property delivered to it to be forwarded, it is agreed that this company shall not be liable for any damage to said property caused by detention of any train of cars or upon any steamboat upon which said property shall be placed for transportation, nor by the neglect or refusal of any railroad or steamboat company to receive and forward the said property.

In no event shall the Adams Express Company be liable for any loss or damage unless the claim therefor shall be presented to them in writing, at this office, within thirty days after this date, in a statement to which this receipt shall be annexed.

All articles of glass, or contained in glass, or any of a fragile nature, will be taken at shipper's risk only, and the shipper agrees that the company shall not be held responsible for any injury, by breakage or otherwise, nor for damage to goods not properly packed and secured for transportation.

It is further agreed, that said company shall not, in any event, be liable for any loss, damage or detention caused by the acts of God, civil or military authority, or by rebellion, piracy, insurrection, or riot, or the dangers incident to a time of war, or by any riotous or armed assemblage.

If any sum of money, besides the charge for transportation, is to be collected from the consignee on delivery of the above described property, and the same is not paid within thirty days from the date thereof, the shipper agree- that this company may return said property to him at the expiration of that time, subject to the conditions of this receipt, and that he will pay the charges for transportation both ways, and that the liability of this company for such property while in its possession for the purpose of making such collection, shall be that of warehousemen only.

For the Company, BUTLER.

Freight Pd. 25¢

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Back of Exhibit X.

Shipments forwarded by fastest passenger trains in charge of messengers.

ADAMS EXPRESS COMPANY,

Forwarders by Express to all parts of the United States Connections made, and rates given, to

Canada, Mexico, Australia. and all parts of Europe, Asia and Africa

MONEY ORDERS.

On sale, payable at nearly every Express Office in the United States.

RATE:

The only system of sending money through the mails furnishing a receipt which, in case orders are lost, delayed, stolen or destroyed, insures the purchaser against loss.

The rates are less than for any other method of sending money where absolute security is afforded.

Express Money Orders can be purchased during any hour of the day and no written application is required.

Not over $2.50	3 cts.
" 5.00	5 "
" 10.00	8 "
" 20.00	10 "
" 30.00	12 "
" 40.00	15 "
" 50.00	18 "
" 60.00	18 "
" 75.00	25 "
" 100.00	28 "

Over $100 at above rates.

Rates as low as by any Responsible Express Co.

Special Rates on Printed Matter.

This Company has about 6,000 Agencies and operates nearly *nearly* 40,000 miles of Railroads.

56 *Separate Answer of A. E. Craddock, Respondent.*

Filed April 30, 1903.

In the Circuit Court of the United States for the Eastern District of Virginia.

THE WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, a Body Corporate, Plaintiff,

vs.

PEOPLE'S STEAMBOAT COMPANY and Others, Defendants.

The separate answer of A. E. Craddock to a bill of complaint exhibited against him and others in the above entitled court under the style set forth above.

To the Honorable the Judges of the Circuit Court of the United States in and for the Eastern District of Virginia:

This respondent, A. E. Craddock, respectfully petitions the Honorable Judges of the said court for leave to file this his answer to the bill of complaint of the plaintiff in the above entitled cause.

The separate answer of A. E. Craddock to a bill of complaint exhibited against him and others in the Circuit Court of the United States for the Eastern District of Virginia by the Weems Steamboat Company, a body corporate who complain of People's Steamboat Company, a corporation organized under the laws of Virginia, William D. Carter, president of said company, A. W. Embrey, vice-president of said company, and A. Randolph Howard, treasurer of said company and William D. Carter, —— Craddock, and F. V. Archer:

This respondent, for answer to the said bill of complaint or to so much thereof as he is advised it is necessary or proper that he should make answer, answering, says:

That he is not informed as to many of the matters and things set forth in the said bill of complaint, and is therefore unable to admit them, but calls for strict proof of every allegation of the said bill which is not admitted in this answer.

This respondent admits that he is at the present time the Captain of the steamer Tourist, and is employed by the People's Steamboat Company to act in said capacity, and that in accordance with
57 orders given him from time to time by his employers, he has stopped the Steamer Tourist at the wharves mentioned by the complainant in its bill. That he has discharged freight and passengers over said wharves, and upon said pier heads, and has taken on freight and passengers which he from time to time found upon the said pier heads, and waiting to get upon, or be placed upon, the said steamer Tourist.

This respondent denies that he was ever notified or forbidden to land the said steamer Tourist at any of said wharves by the Weems Steamboat Company, or by Henry Williams, or by any one else in authority, or pretending to have authority, to issue such order, or prohibition.

This respondent avers that his employment began in January, 1903, and that prior to that time he was not on the steamer Tourist, and knows nothing of his own knowledge of any matters that occurred in connection with the running or landing of the said Steamer Tourist, prior to the — day of Jan., 1903.

This respondent is able to deny, from his personal observation since he has been navigating the said Tourist up and down the Rappahannock river and does deny the allegation of the complainant's bill that it costs five or ten thousand dollars per year to keep the wharves mentioned in the complainant's bill in order. This respondent admits that for some cause (whether from defects in the construction of the boats of the Weems Steamboat Company, or from unskillful handling, or because of the unsuitableness of the said boats for use in the Rappahannock river this respondent is not prepared to say) much unusual and apparently needless damage has been done the wharves along the said river between Urbanna and Fredericksburg by the steamboats of the said The Weems Steamboat Company; but this respondent denies that the steamer Tourist has ever damaged any wharf on the Rappahannock river, and calls for strict proof of the allegation of the complainant's bill alleging damage.

This respondent also denies the allegations of the complainant's

bill setting forth alleged disorder and trespassing alleged to prevail; and this respondent avers that at no time since he has been Captain of the said steamer Tourist has there been any disorder either upon the said boat, or upon any of the several docks, piers, and landing places while the said steamer Tourist was present, and your respondent does not believe there has been any such disorder, at any other time, and calls for strict proof of the said allegation.

This respondent further admits that all the wharves at which he has ever landed the Steamer Tourist are built out into the public navigable waters of the Rappahannock river.

This respondent further says that at none of the places where the wharves mentioned in the bill of complaint are located,
58 are there more than one wharf at which any steamer can land, and that owing to the formation of the river bottom, landing places are comparatively few for vessels drawing as much as five or six feet of water. This respondent further avers that all of the pier heads of the wharves mentioned by the complainant in its bill are in the public navigable waters of the Rappahannock river; that he is a licensed captain with master's papers for Chesapeake Bay and tributaries and that he knows the navigable waters of the Rappahannock river, and knows that the said pier heads are in the said navigable waters, and all are below the lowest low water mark, that he has seen vessels other than the boats belonging to The Weems Steamboat Company lying at several of the wharves mentioned by the complainant in its bill, and this respondent denies that any of the said wharves are in any sense private, but avers that all are, and have been ever since he has known them, open to the public commerce of the river.

This respondent denies each and every material allegation in the complainant's said bill, except such as are specifically admitted in this answer, and denies all equity in the said bill, and calls for strict proof of every material allegation contained in the said bill.

And now, having fully answered, this respondent prays to be hence dismissed, with his reasonable costs, and as in duty bound, will, ever pray, &c., &c.

A. E. CRADDOCK.

ALVIN T. EMBRY, *p. d.*

Affidavit of E. D. Cole on Behalf of Respondents.

Filed April 30, 1903.

VIRGINIA,
Corporation of Fredericksburg, To-wit:

Before me, Geo. W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State of Virginia, this day personally appeared in my said Corporation E. D. Cole, and made oath that the operation of a steamboat on the Rappahannock river upon the run now being made by the Steamer "Tourist" operated by the People's Steamboat Company is a public necessity to the business interests of the City of Fredericksburg, and to the people who live in the counties

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abutting upon both sides of the Rappahannock river; that
59 since the said steamer Tourist has been running many hundred- of people have visited Fredericksburg who did not formerly come, and who were unable to come for lack of adequate and convenient transportation for themselves and their property; that the travel and traffic mentioned has been practically created by the operation of the Steamer Tourist, as aforesaid, and is new business, which is valuable to those engaged in business in Fredericksburg, and, (as customers habitually protect themselves by buying in the most favorable market accessible to them) valuable to a very large number of the people who live on both sides of the Rappahannock river below Fredericksburg; that before the Steamer Tourist began making its regular trips on the Rappahannock river, very few persons came to or went away from Fredericksburg by the Weems Line Steamboats, and the shipments of freight between Fredericksburg and points on the Rappahannock river were only a small fraction of the present volume of such shipments, and were inconsiderable.

E. D. COLE.

Sworn to and subscribed before me, the aforesaid notary, in my Corporation aforesaid, this 24 day of April, 1903.

Witness my hand and Notarial Seal.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

Seal tax exempt.

Commission expires Sept. 28, 1903.

Joint Affidavit of Numerous Citizens on Behalf of Respondents.

Filed April 30, 1903.

VIRGINIA,
Corporation of Fredericksburg, To-wit:

Before me, Geo. W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State of Virginia, this day personally appeared in my said Corporation R. L. Biscoe, E. J. Smith, Wm. Bernard, E. W. Stearns, D. L. Gravatt, Henry Dannehl, G. H. Morrison, S. S. Kaufman, E. K. Wheeler, W. A. Bell, J. Mc. C. Boulware, J. W. Thomas, M. S. Chancellor, David Hirsh, N. C. Decker, T. Mc. Cracken, W. L. Watson, H. H. Johnston, T. S. Strasburger, Wm. S. Chesley, M. B. Rowe, Jno. C. Willis, Wm. L. Brannan, Jno. F. Scott, W. H. Brulle, Jos. M. Goldsmith, A. H. Wallace, Isaac Hirsh, E. W. Wills, W. L. Burres, G. Frank Timber-
60 lake, J. E. Timberlake, E. C. Ninde, D. C. Bowman, S. G. Wallace, J. Fred. Brown, J. W. Adams, M. E. Ferrell, J. W. Thomas, W. K. Goolrick, M. M. Lewis, W. E. Lang, B. H. Jacobs, R. L. Stoffregen, Lawrence Perry, H. D. Genther, Jno. T. Donnahoe, Geo. P. Carter, J. R. Leitch, Wm. Sullinger, M. J. Gateley, T. C. Montague, J. S. Woods, B. J. Marshall, W. S. Embrey, Chas. J. Green, H. Falk, T. N. Brent, C. W. Jones, R. A. Kishpaugh and Jas. T. Layton and each respectively made oath that the operation

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of a steamboat on the Rappahannock river upon the run now being made by the Steamer "Tourist" operated by the People's Steamboat Company is a public necessity to the business interests of the City of Fredericksburg, and to the people who live in the counties abutting upon both sides of the Rappahannock river; that since the said steamer Tourist has been running many hundreds of people have visited Fredericksburg who did not formerly come, and who were unable to come for lack of adequate and convenient transportation for themselves and their property; that the travel and traffic mentioned has been practically created by the operation of the Steamer Tourist, as aforesaid, and is new business, which is valuable to those engaged in business in Fredericksburg, and (as customers habitually protect themselves by buying in the most favorable market accessible to them) valuable to a very large number of the people who live on both sides of the Rappahannock River below Fredericksburg; that before the Steamer Tourist began making its regular trips on the Rappahannock river, very few persons came to or went away from Fredericksburg by the Weems Line Steamboats, and the shipments of freight between Fredericksburg and points on the Rappahannock river were only a small fraction of the present volume of such shipments, and were inconsiderable.

Affiants further made oath that the Weems Steamboat Company was earnestly requested by the Business Men's Association of Fredericksburg to inaugurate the boat service now being given by the "Tourist," and utterly failed and refused to do so; and that The Weems Steamboat Company made no change in its schedules, or in its manner or method of operating its steamboats until after it was demonstrated by the running of the Steamer "Tourist" that the public demand for such service could not longer be denied.

61 (Names.)	(Business.)
Smith Cogbill Shoe Co., E. J. Smith, Pres't.	Wholesale Shoes,
Wm. Bernard	Stoves & Plumbing,
E. W. Stearnes	Dry Goods Merchant,
Dabney L. Gravatt	Carriage Mfg.,
Henry Dannehl, Pres.	Hotel Dannehl,
G. H. Morrison	Mfr. Spokes,
Loewensom & Kaufman	Jewelers,
E. K. Wheeler	Undertaker,
W. A. Bell & Bros.,	Furniture & Carpets,
R. L. Biscoe	Implements & Grain,
J. McCalla Boulware	Grain, Feed & Hay,
J. W. Thomas	Boarding House,
M. S. Chancellor of Chancellor & Rawlings	Agl. Implements,
David Hirsh of S. Hirsh & Bros.	Wholesale Grocers,
Nelson C. Decker of Decker & Alrich	Agricultural Implements,

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(Names.)	(Business.)
T. McCracken of T. McCracken Son Co.	
W. L. Watson	Boston Variety Store,
H. H. Johnston of Johnston & Pearson	Druggists,
J. S. Strasburger of Strasburger & Son	Liquors, Tobacco & Cigars,
Wm. S. Chesley of Magrath & Chesley	Grocers,
M. B. Rowe	Green Grocery Live Stock &c.
Jno. C. Willis of Jno. C. Willis & Son	Hardware &c.,
W. L. Brannan	Groceries,
John F. Scott	Hardware,
W. H. Brulle	Confectioner,
Joseph M. Goldsmith Firm, B. Goldsmith & Son.	Clothing,
A. H. Wallace of Wallace & Co.	Shoes Hats &c.,
Isaac Hirsh of Isaac Hirsh & Son	Dry Goods &c.,
Edgar W. Willis	Groceries,
W. L. Burress	Grocery,
G. Frank Timberlake & Co. By G. Frank Timberlake	Dry Goods &c.,
62 J. E. Timberlake of Brulle & Timberlake	Shoes and Hats,
E. C. Hinde	Furniture,
D. C. Bowman	Druggist,
S. G. Wallace of Buhr and Wallace	Dry Goods,
J. Fred Brown of Brown & Crismond	Shoes, Hats &c.
J. Willard Adams	Books, Stationary,
M. E. Ferrell, Mgr.	The Singer Mfg. Co.,
J. W. Thomas	Shoes and Hats,
W. K. Goolrich of W. B. Goolrich Sons	Druggist,
M. M. Lewis	Druggist,
W. E. Lang	Merchant,
B. H. Jacobs	"
R. Lee Stoffregen of E. J. Cain & Co.	Stoves & Plumbing,
L. Perry of Perry & Co.	Tailors,
H. D. Genther	Harness & Saddles,
Jno. T. Donahoe	Harness & Saddles,
Geo. P. Carter	Washington Ins.,
J. R. Leitch of J. R. Leitch & Co.	Coal & Wood,
Wm. Sullinger	Lumber and Ties,

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(Names.)	(Business.)
M. J. Gately	Grocer,
T. C. Montague	Druggist,
J. Shinns Woods	Miller,
B. J. Marshall	Grocer
W. S. Embrey	Ties and Lumber,
Chas. J. Green	Mfgr. of Kenmore Shoes
H. Falk	Va. Clothing House,
T. N. Brent	Dry Goods, Notions &c.,
C. W. Jones	Dry Goods & Millinery,
R. A. Kispaugh	Stationary & Printing,
Jas. T. Layton	Clothing & Hats.

Sworn to and subscribed before me, the aforesaid notary, in my Corporation aforesaid, this 24 day of April, 1903.

Witness my hand and Notarial Seal.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
No tax on this seal. *Notary Public.*

Commission expires Sept. 28, 1903.

63 *Affidavit of Chas. C. Rowlett on Behalf of Respondents.*

Filed April 30, 1903.

VIRGINIA,
Corporation of Fredericksburg, To-wit:

Before me, A. T. Embrey, a Notary Public in and for the Corporation of Fredericksburg, State aforesaid, this day personally appeared in my said Corporation Charles C. Rowlett, and made oath that he was present at a meeting of the Business Men's Association of Fredericksburg which was held in the room of the said Association in Fredericksburg on or about April 10th, 1901; that The Weems Steamboat Company had theretofore been earnestly requested by the Business Men's Association aforesaid to furnish a steam boat schedule which would be quicker and more regular than the service they were then and had theretofore given between Fredericksburg, and points on the Rappahannock River, and that Mr. Henry Williams acting for the Weems Steamboat Company had indicated a strong reluctance to do so; that he was pressed to do so, and at the meeting held as aforesaid on or about April 10th, 1901, Mr. Wm. D. Scott, who was the local agent of The Weems Steamboat Company stationed at Fredericksburg, read to the said Business Men's Association a letter which he represented was authentic, and which was, or purported to be, signed by Henry Williams for the Weems Steamboat Company; that Mr. Williams in the said letter contended, and Mr. Wm. D. Scott speaking in behalf of The Weems Steamboat Company most emphatically stated that there was not sufficient business to be had on the upper part of the Rappahannock river to justify the running of a boat on the schedule asked for by the Business Men's

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Association (which schedule is identical with the schedule which has been run by the Steamer Tourist since it has been running on the Rappahannock); that the boats of the Weems Steamboat Company when run higher up the river than Tappahannock were run at a loss to the company operating them; and Mr. Williams in his said letter made the statement that were it not for the contract for carrying the United States Mail requiring him to operate his boats through, the company would stop all of its boats at Tappahannock, and abandon the upper part of the river entirely.

The affiant further made oath that he is not a stockholder in The People's Steamboat Company; that the People's Steamboat Company, by the running of their Steamer "Tourist" on
64 the Rappahannock river are furnishing quick and convenient means of transportation to several thousands of people who were without adequate transportation facilities of any kind before the said Tourist was started on the Rappahannock river. That the operation of the said steamer is of public importance to the business interests of Fredericksburg, and of large sections of country on both sides of the Rappahannock, and furnishes to many thousands of the population of the Rappahannock valley a quicker, cheaper, and generally more satisfactory means of reaching their State Capital, and the cities of the country, than they have ever before possessed.

Affiant further made oath that there was no change made by the Weems Steamboat Company in its schedules or in its methods or manner or operating its boats until after it was demonstrated by the operation and success of the Steamer Tourist that there was a need for the service which they had been asked to render, and which they had refused to undertake, and had stated, was unimportant, and necessarily unprofitable.

CHAS. C. ROWLETT.

Sworn to and subscribed before me, the aforesaid notary public, in my said Corporation this 23 day of April, 1903.

Witness my hand and notarial seal.

[NOTARIAL SEAL.] A. T. EMBREY,
Notary Public.

No tax on this seal.

My commission expires Mch. 9, 1904.

Affidavit of S. Sydney Bradford on Behalf of Respondents.

Filed April 30, 1903.

VIRGINIA, *Corporation of Fredericksburg, Towit:*

Before me, Geo. W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State of Virginia, this day personally appeared in my said Corporation S. Sydney Bradford, and made oath that he was present at a meeting of The Business Men's Association of Fredericksburg, which was held in the room of the

said Association in Fredericksburg on or about April —, 1901; that The Weems Steamboat Company had theretofore been earnestly requested by the Business Men's Association aforesaid to fur-
65 nish a steamboat schedule which would be quicker and more regular than the service they were then and had theretofore given between Fredericksburg, and points on the Rappahannock river, and that Mr. Henry Williams acting for the Weems Steamboat Company had indicated a strong reluctance to do so; that he was pressed to do so, and at the meeting held as aforesaid on or about April —, 1901, Mr. Wm. D. Scott, who was the local agent of The Weems Steamboat Company stationed at Fredericksburg, read to the said Business Men's Association a letter which he represented was authentic, and which was, or purported to be, signed by Henry Williams for the Weems Steamboat Company; that Mr. Williams in the said letter contended, and Mr. Wm. D. Scott speaking in behalf of the Weems Steamboat Company most emphatically stated that there was not sufficient business to be had on the upper part of the Rappahannock river to justify the running of a boat on the schedule asked for by the Business Men's Association (which schedule is identical with the schedule which has been run by the Steamer Tourist since it has been running on the Rappahannock); that the boats of the Weems Steamboat Company when run higher up the river than Tappahannock were run at a loss to the company operating them; and Mr. Williams in his said letter made the statement that were it not for the contract for carrying the United States mail requiring him to operate his boats through, the company would stop all of its boats at Tappahannock, and abandon the upper part of the river entirely.

The affiant further made oath that he is not a stockholder in The People's Steamboat Company; that the People's Steamboat Company, by the running of their steamer "Tourist" on the Rappahannock river are furnishing quick and convenient means of transportation to several thousands of people who were without adequate transportation facilities of any kind before the said Tourist was started on the Rappahannock river. That the operation of the said steamer is of public importance to the business interests of Fredericksburg, and of large sections of country on both sides of the Rappahannock, and furnishes to many thousands of the population of the Rappahannock valley a quicker, cheaper, and generally more satisfactory means of reaching their State Capital, and the cities of the country, than they have ever before possessed.

Affiant further made oath that there was no change made by the Weems Steamboat Company in its schedules or in its methods or manner of operating its boats until after it was demonstrated by the operation and success of the Steamer Tourist that there was a need for the service which they had been asked to render, and
66 which they had refused to undertake, and had stated was unimportant, and necessarily unprofitable.

S. SYDNEY BRADFORD.

Sworn to and subscribed before me, the aforesaid notary public, in my said Corporation this 23 day of April, 1903.

Witness my hand and Notarial Seal.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

No tax on this seal.
Commission expires Sept. 28, 1903.

Affidavit of E. W. Stearns on Behalf of Respondents.

Filed April 30, 1903.

VIRGINIA, *Corporation of Fredericksburg, Towit:*

Before me, Geo. W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State aforesaid, this day personally appeared in my said Corporation E. W. Stearns, and made oath that he was present at a meeting of The Business Men's Association of Fredericksburg, which was held in the room of the said association in Fredericksburg on or about April —, 1901; that The Weems Steamboat Company had theretofore been earnestly requested by the Business Men's Association aforesaid to furnish a steamboat schedule which would be quicker and more regular than the service they were then and had theretofore given between Fredericksburg, and points on the Rappahannock river, and that Mr. Henry Williams acting for the Weems Steamboat Company had indicated a strong reluctance to do so; that he was pressed to do so, and at the meeting held as aforesaid on or about April —, 1901, Mr. Wm. D. Scott, who was the local agent of The Weems Steamboat Company stationed at Fredericksburg, read to the said Business Men's Association a letter which he represented was authentic, and which was, or purported to be, signed by Henry Williams for the Weems Steamboat Company; that Mr. Williams in the said letter contended, and Mr. Wm. D. Scott speaking in behalf of The Weems Steamboat Company most emphatically stated that there was not sufficient business to be had on the upper part of the Rappahannock river to justify the
67 running of a boat on the schedule asked for by the Business Men's Association (which schedule is identical with the schedule which has been run by the Steamer Tourist since it has been running on the Rappahannock); that the boats of the Weems Steamboat Company when run higher up the river than Tappahannock were run at a loss to the company operating them; and Mr. Williams in his said letter and W. D. Scott in his verbal statement to the association made the statement that were it not for the contract for carrying the United States mail it would be unprofitable to operate his boats through.

The affiant further made oath that he is not a stockholder in The People's Steamboat Company; that he was in April, 1901, & is now secretary of the Business Men's Association of Fredericksburg; that the People's Steamboat Company, by the running of their steamer "Tourist" on the Rappahannock river are furnishing quick and

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convenient means of transportation to several thousands of people who were without adequate transportation facilities of any kind before the said Tourist was started on the Rappahannock river. That the operation of the said steamer is of public importance to the business interests of Fredericksburg and of large sections of country on both sides of the Rappahannock, and furnishes to many thousands of the population of the Rappahannock valley a quicker, cheaper, and generally more satisfactory means of reaching their State Capitol, and the cities of the country, than they have ever before possessed.

Affiant further made oath that there was no change made by the Weems Steamboat Company in its schedules or in its methods or manner of operating its boats until after it was demonstrated by the operation and success of the Steamer Tourist that there was a need for the service which they had been asked to render, and which they had refused to undertake, and had stated was unimportant, and necessarily unprofitable.

E. W. STEARNS.

Sworn to and subscribed before me, the aforesaid notary public, in my said Corporation this 23 day of April, 1903.

Witness my hand and Notarial Seal.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

No tax on this seal.

My commission expires Sept. 28, 1903.

68 *Affidavit of A. Randolph Howard on Behalf of Respondents.*

Filed April 30, 1903.

VIRGINIA, *Corporation of Fredericksburg, To wit:*

Before me, Geo. W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State aforesaid, this day personally appeared in my said Corporation A. Randolph Howard, and made oath that he is a stockholder and a director of The People's Steamboat Company, and that he is the treasurer of the said Company; that he is fully advised as to the financial condition, assets and liabilities of the said People's Steamboat Company, and that the said company is entirely solvent, and owns assets in excess of its liabilities amounting to thousands of dollars. That the bills due by the said People's Steamboat Company from time to time are promptly met and that the said company is fully able to pay any just liability it may owe. That the said company has no debts or liabilities except its current pay rolls, and small sums due for current wharfage and current supplies, all of which current expenses are fully paid at short intervals, and to the entire satisfaction of the parties to whom the same may be due.

A. RANDOLPH HOWARD.

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Sworn to and subscribed before me, the aforesaid notary this 23 day of April, 1903, in my Corporation aforesaid.

Witness my hand and Notarial Seal.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

No tax on this seal.

Commission expires Sept. 28, 1903.

69 *Affidavit of Wm. D. Carter on Behalf of Respondents.*

Filed April 30, 1903.

VIRGINIA, *Corporation of Fredericksburg, To wit:*

Before me, Geo. W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State aforesaid, this day personally appeared in my said Corporation Wm. D. Carter, and made oath that he is a stockholder and a director of The People's Steamboat Company, and that he is the president and acting auditor of the said company; that he is fully advised as to the financial condition, assets and liabilities of the said People's Steamboat Company, and that the said company is entirely solvent, and owns assets in excess of its liabilities amounting to thousands of dollars. That the bills due by the said People's Steamboat Company from time to time are promptly met and that the said company is fully able to pay any just liability it may owe. That the said company has no debts or liabilities except its current pay rolls, and small sums due for current wharfage and current supplies, all of which current expenses are fully paid at short intervals, and to the entire satisfaction of the parties to whom the same may be due.

WM. D. CARTER.

Sworn to and subscribed before me, the aforesaid notary this 23 day of April, 1903, in my Corporation aforesaid.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

No tax on this seal.

Commission expires Sept. 28, 1903.

70 *Affidavit of M. B. Rowe on Behalf of Respondents.*

Filed April 30, 1903.

VIRGINIA, *Corporation of Fredericksburg, To wit:*

Before me, Geo. W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State aforesaid, this day personally appeared in my said Corporation M. B. Rowe and made oath that he is well acquainted with the business and financial standing of the People's Steamboat Company; that to the best of his knowledge

and belief the said company is solvent, and that its credit is good in the community for any and all orders its officers or duly authorized agents may give.

M. B. ROWE.

Sworn to and subscribed before me, the aforesaid notary, in my Corporation aforesaid, this 23 day of April, 1903.

Witness my hand and Notarial Seal.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR., *Notary.*

No tax on this seal.

Commission expires Sept. 28, 1903.

Affidavit of B. J. Marshall on Behalf of Respondents.

Filed April 30, 1903.

VIRGINIA, *Corporation of Fredericksburg, To wit:*

Before me, P. V. D. Conway, a notary public in and for the corporation of Fredericksburg, State aforesaid, this day personally appeared in my said corporation, B. J. Marshall, and made oath that he is well acquainted with the business and financial standing of the People's Steamboat Company; that to the best of his knowledge and belief the said company is solvent, and that its credit is good in the community for any and all orders its officers or duly authorized agents may give.

B. J. MARSHALL.

Sworn to and subscribed before me, the aforesaid notary in my corporation aforesaid, this 24 day of April, 1903.

[NOTARIAL SEAL.] P. V. D. CONWAY,
Notary Public.

Seal tax exempt.

My commission expires Ap'l 13, 1905.

71 *Affidavit of Bessie Chesley on Behalf of Respondents.*

Filed April 30, 1903.

VIRGINIA, *Corporation of Fredericksburg, To-wit:*

Before me, Geo. W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State of Virginia, this day personally appeared in my said Corporation Bessie Chesley, and being first by me duly sworn, made oath that in the month of January, 1903, at the direction and request of William D. Carter, acting as the President of the People's Steamboat Company at the time, she prepared statements from the accounts kept by the purser upon the Steamer Tourist, showing the amount of business in the handling

of freight and passengers which had been done by the said steamer Tourist, and marked upon envelop the amount of business at each of the wharves which the said steamer Tourist was accustomed to land at for the discharge or receipt of freight and passengers upon the Rappahannock river in Virginia; that she placed in each of said envelopes an amount of money equal to ten per cent. of the volume of business shown by the said steamer's accounts to have been done at each of said wharves respectively, and marked the amount of money contained therein on each envelop, and also plainly marked on each envelop the name of the wharf to which it pertained. That the envelops for Port Royal, Leedstown, Tappahannock, Wellford's Wharf and Sharp's marked as aforesaid, and containing the wharfage for the months of November and December, 1902, in currency, were put into a package, and sealed up to be sent to The Weems Steamboat Company, or to Henry Williams, president of said company at Baltimore.

That some days later, Mr. Wm. D. Scott, who is and who was then, the local agent of the Weems Steamboat Company in Fredericksburg, came into the office of Wm. D. Carter in Fredericksburg, Va., and delivered to the affiant the same package of envelops, in the same package, which package had been opened and tied up again.

That the said Wm. D. Scott informed affiant at that time that the package had been sent to him, the said Wm. D. Scott by Mr. Henry Williams with instructions to return it to Wm. D. Carter, and that it contained the money for the wharfage, and that Mr. Williams declined to receive it. And the said Wm. D. Scott cautioned the affiant to be careful of the said package, as it contained money.

BESSIE CHESLEY.

72 Sworn to and subscribed before me, the aforesaid notary in my Corporation aforesaid, this 24 day of April, 1903.

Witness my hand and Notarial Seal.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR., *Notary.*

No tax on this seal.

Commission expires Sept. 28, 1903.

Affidavit of J. T. Payne on Behalf of Respondents.

Filed April 30, 1903.

VIRGINIA, *Corporation of Fredericksburg, To-wit:*

Before me, Geo. W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State aforesaid, this day personally appeared in my said Corporation J. T. Payne, and made oath that he is familiar with the location and situation of the various wharves on the Rappahannock river below Layton's; that he has often been at each and every one of the said wharves, and knows that Naylor's Wharf is adjacent to a public road leading from Warsaw, the county seat of Richmond county, and that Naylor's is a

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place of public barter and sale, and that a store and post office are kept there by T. D. Marks in a building situated very near the shore end of the wharf; that there is also a large canning factory at Naylor's and close to the wharf, and that the ground between the wharf, the store and the canning factory is a public thoroughfare.

The affiant further makes oath that the wharf at Tappahannock abuts upon a public street of the town of Tappahannock, and the wharf is used by the public generally not only as a shipping place, but as a place at which fish and other merchandise are constantly being bought and sold in season.

The affiant further makes oath that Wellford's Wharf is situated at the terminus of a public road leading from the town of Warsaw to Wellford's wharf, and that it is a place of public barter and sale, and a store and post office are kept in a building abutting upon the public road at the shore end of the wharf structure;

The affiant further makes oath that a public road leading from Dunnsville, Va., terminates at Ware's wharf.

73 The affiant further makes oath that a public road leading from Center Cross terminates at the shore end of Bowler's wharf; that there are several stores kept in buildings very near to the shore end of *a* Bowler's wharf, and a post office is kept there.

That adjacent to and upon the outer or channel end of Bowler's wharf oysters are frequently, and regularly in the season, bought, sold, and packed and shipped. That certain oyster dealers have their oyster house on piling adjoining the outer or channel end of Bowler's wharf.

The affiant further makes oath that Bay Port is at the terminus of a public road leading from Lane View to the said wharf, and that another public road leading from Jamaica, Va., terminates at Bay Port wharf, and a store and post office are kept there.

This affiant further makes oath that both at Whealton's and Sharp's there are considerable and flourishing towns; that at each place public streets lead from the business centers of the said towns to the shore end of the wharf at each place. That there is but one wharf at Whealton's and one wharf at Sharp's. That along both sides of each of these wharves, and adjacent to and adjoining the pier head of each are located several wharf houses in which various parties have their regular places of business, and buy, sell, open, pack and ship oysters; that there are artesian wells flowing out upon these wharves for the use of the persons who do business there, and that the public generally comes and goes upon the said wharves at will, without let or hinderance.

That small boats come in and land, and oyster boats land and sell their oysters at the said wharves. That the United States mail regularly passes over the said wharves.

And in regard to the situation at Wellford's, this affiant further says that while there are certain gates upon the travelled road leading from Warsaw to the said wharf, yet the public travel the said road at will; that the affiant is engaged in business, and is constantly travelling the territory adjacent to the wharves mentioned above,

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and ships merchandise to many merchants at Warsaw, all of whom receive their goods at Wellford's wharf, and make their shipments from Wellford's, so far as this affiant is advised as to their shipments.

J. T. PAYNE.

Sworn to and subscribed before me, the aforesaid notary, in my said corporation, this 22nd day of April, 1903.

Witness my hand and notarial seal.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

No tax on this seal.

Commission expires Sept. 28, 1903.

74 *Affidavit of F. V. Archer on Behalf of Respondents.*

Filed April 30, 1903.

VIRGINIA, *Corporation of Fredericksburg, To-wit:*

Before me, George W. Shepherd, Jr., a notary public in and for the Corporation of Fredericksburg, State of Virginia, this day personally appeared, in my Corporation, F. V. Archer and made oath that he was on board of the Steamer Tourist and in the employment of the People's Steamboat Company, and acting as purser on the said Steamer "Tourist" on the 21st day of April, 1903, and that when the said Steamer Tourist approached Tappahannock wharf on said 21st day of April, 1903, the Steamer Caroline belonging to The Weems Steamboat Company was lying at and across the end of the pier head at said wharf, and a schooner was lying at the lower side of said dock, and under the conditions of the tide and the wind at the time and because of the position in which the Steamer Caroline was lying at the said dock, it was impossible to bring the Steamer Tourist to the said dock, two of the three sides, or faces of the said dock being occupied, as stated, herein by the Steamer Caroline, and the Schooner aforesaid; that the Captain of the Steamer Tourist asked permission of the Captain of the Caroline (Captain Mason Gourley) to land along side of the Caroline in order to discharge freight and passengers across and through the said steamer Caroline, and was refused permission to do so by the said Captain Gourley; that the Captain of the said Steamer Tourist then asked permission of the Captain of the said schooner which was lying at the side of the said Tappahannock dock, to land along side of his vessel, and the Captain of the said schooner immediately gave the permission, and the Captain of the Steamer Tourist immediately docked the Steamer Tourist along side the said schooner, and discharged his freight and passengers across the deck of the said schooner, and left the said Tappahannock dock without in any manner interfering with the use of the said dock by the Steamer Caroline, and without any serious inconvenience, and without any damage whatever, to the schooner aforesaid, which was using the said Tappahannock dock at the time.

Affiant further made oath that there is a public and open thoroughfare passing the end of the Tappahannock wharf, at the
75 shore, and that there is a large pickle factory built very close to the shore end of the said Tappahannock wharf, and that said pickle factory is approached by wagons over the same ground used by the public in approaching the shore end of the said wharf, and that there is a bridge, or pass-way built upon piling from the said pickle factory to the said Tappahannock wharf, and that to the best of affiant's knowledge and belief, the said pickle factory is not owned or controlled in any way by The Weems Steamboat Company.

Affiant further made oath that Port Royal wharf, Leedstown wharf, Carter's wharf, Naylor's wharf, Tappahannock wharf, Weilford's wharf, Ware's wharf, Bowler's wharf, Sharp's wharf, Bay Port wharf, Whealton wharf, Water View wharf and Monaskon are each built out into the navigable waters of the Rappahannock river, and each has its pier head far out in the river beyond the lowest low water mark; and that to the best of the affiant's knowledge, information and belief, there is one or more public roads, streets, or thoroughfares adjacent to and adjoining, the shore end of each of the said wharves.

Affiant further made oath that each of the said wharves is used by the public, without let or question so far as the affiant ever heard or can learn, until The Weems Steamboat Company undertook to forbid the "Tourist" to make landings at the said wharves.

F. V. ARCHER.

Sworn to and subscribed before me, the aforesaid notary, in my corporation aforesaid, this 25 day of April, 1903.

Witness my hand and Notarial Seal.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

No tax on this seal.

My commission expires Sept. 28, 1903.

76 *Affidavit of Wm. D. Carter on Behalf of Respondents* (2).

Filed April 30, 1903.

VIRGINIA, *Corporation of Fredericksburg, To-wit:*

Before me, George W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State of Virginia, personally appeared, in my said Corporation, William D. Carter, and made oath that he is familiar with the location and surroundings of the wharf at Tappahannock, and that he has made a survey of the ground adjacent to the shore end of the wharf, and that he has surveyed the ground conveyed to the Weems Steamboat Company from R. E. Wynne and wife and Aylett, trustee; that the lines of the said plat of ground were surveyed at an angle to the shore line, many degrees different from a right angle, in an effort to make the lines of the said plat, when said lines were prolonged out into the river, to embrace

between them the pier head at Tappahannock; that lines drawn perpendicular with the shore lines as specified in the act giving rip-rian owners the right to construct wharves opposite their land, would leave the pier head and much of the bridge or pass way from the shore to the pier head Northwest of said prolonged line; and affiant says that the effect of this is to give to the present pier head the benefit of the location, or very nearly the location, in the Rappahannock river to which the public are entitled for the construction of a wharf or pier out from the foot of the street in Tappahannock North of Main street, and at the foot of which said street the old wharf formerly abutted upon the shore; so that the location of the present pier head, owing to the shape of the river bottom, and the lands about the shore, prevents the construction, or use, if constructed, of a public wharf by the County of Essex opposite to the place where the old wharf landed.

Affiant further makes oath that to the best of his knowledge and belief the present wharves both at Tappahannock, and at Port Royal encroach upon, and interfere with bottom that is opposite public landings.

WM. D. CARTER.

Sworn to and subscribed before me, the aforesaid notary, in my Corporation aforesaid, this 25th day of April, 1903.

Witness my hand and Notarial Seal.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

Seal tax exempt.

My commission expires Sept. 28, 1903.

77 *Affidavit of Wm. D. Carter on Behalf of Respondents* (3).

Filed April 30, 1903.

VIRGINIA, *Corporation of Fredericksburg, To-wit:*

Before me, George W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State of Virginia, this day personally appeared in my said Corporation William D. Carter, and made oath that he has been familiar for more than ten years with the following wharves on the Rappahannock river, to-wit: Port Royal, Leedstown, Tappahannock, Wellford's, Sharp's, Naylor's Hold, Ware's wharf, Bowler's wharf, Bay Port, Water View, Wheatton, Monaskon, and Carter's; that he lived for several years in the town of Tappahannock, and has often been to the other wharves, named in this affidavit, with the exception of Carter's wharf and Leedstown. That Port Royal wharf is not the property of any rip-rian owner, and that the Weems Steamboat Company is assessed on the land books of Caroline County with no real estate whatever; that the shore end of the said Port Royal wharf abuts upon an open shore passing the shore ends of two of the streets of Port Royal, and the landing of a public ferry, and that the pier head of the said

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wharf is in the navigable waters of the Rappahannock river and far in the river beyond low water mark.

That Leedstown wharf is built into the navigable waters of the Rappahannock river, and that the shore end of the wharf abuts upon a public road, immediately in front of a public store and post office, and that there is no other wharf or landing place for vessels at either Port Royal or at Leedstown since one of the steamers of the Weems Steamboat Company recently entirely demolished a lumber wharf at Leedstown by running into it.

That Tappahannock wharf is built out into the navigable waters of the Rappahannock river far beyond low water mark; that the shore end of the wharf abuts upon an open stretch of shore used by the public as a street and which was used by the public as a street long before the date of the deeds filed as exhibits "C" and "D" with the bill of complaint in the suit by The Weems Steamboat Company against the People's Steamboat Company and others pending in the Circuit Court of the United States for the Eastern District of Virginia, at Richmond, and is still so used.

78 That Wellford's wharf is built out into the navigable waters of the Rappahannock river, far beyond low water mark, and that the shore end of the said wharf abuts upon a road which is used every day in the year by the public at will; and by very many persons who come to the store and post office which is kept in a building by the side of the said road, and within a few yards of the shore end of the wharf structure itself.

That Sharp's wharf is built out into the navigable waters of the Rappahannock river, far beyond low water mark, and that the shore end of the said wharf abuts upon an open shore which is in daily use by the public as a thoroughfare, road or street, and is within the limits of the village or town of Sharp's; that there is no other wharf than the one mentioned in this affidavit at, or any where near to either Wellford's or Sharp's; that there are places of business out upon Sharp's wharf, and very many warehouses and packing houses where business is daily carried on, besides the storage warehouses of the Weems Steamboat Company; that artesian wells have been sunk from the pier head of the said wharf, and that people have, and affiant believes, do now, live entirely in some of the houses on the said pier head, and have their homes as well as their places of business there, and some of these parties, notably John McCarthy, do business amounting to fully twenty-five thousand dollars per annum, and the affiant believes, to much more than this amount.

That Naylor's (or Naylor' Hold or Hole) is built out into the navigable waters of the Rappahannock river, far beyond low water mark, and that the shore end abuts upon a public road, or space adjacent to a public road and in front of a building in which is kept a large country store and postoffice.

That Ware's wharf is public, and has a United States Post Office which is kept in a house upon the pier head, and that a road which cannot be closed up against the public leads from the shore end of Ware's wharf to the town of Dunnsville, a mile and a half or two miles away.

That Bowler's wharf is built out into the navigable waters of the Rappahannock river, and has long been used by the public who land at it with vessels of all kinds and classes, and for many and various purposes of commerce; that Garrett and Hunt are a firm of oyster-buyers, and buy, sell, shuck, pack and ship oysters at the said pier head at Bowler's wharf, and in a house they occupy built upon piling in the same manner as, and practically forming a part of, the said pier head.

That a public road leads from the shore end of the said Bowler's wharf past several stores located in buildings along and adjacent and near to the sides of the said public road and past the
79 building in which is kept the United States Post Office for the said wharf, and on to the town of Centre Cross, some two miles from the said Bowler's wharf.

That Bay Port is built far out into the navigable waters of Bay Port Bay, which said Bay forms a part of the Rappahannock river; that a public road leads to the shore end of the said wharf, and that vessels of all kinds have long been accustomed to use the said wharf at pleasure, and that a store and postoffice are kept in a building across the public road from the shore end of the said wharf. Affiant further says that because it is some four miles out of the way of a steamer passing directly up the navigable part of the Rappahannock river to pass and touch at Bay Port, it has been the custom of the Weems Steamboat Company to pass by Bay Port with most of its steamboats without stopping there; and that only one or two boats each week of the Weems Steamboat Company touch at Bay Port, and that the failure of the said steamers to run regularly and with frequency, to the said Bay Port wharf has occasioned great loss and inconvenience to a large number of citizens who live at Bay Port, and in the village of Owen Hill, and in a thickly populated section of country adjacent to the said wharf. That the relief experienced by the People of Bay Port at getting a daily boat, as supplied by the People's Steamboat Company in the operation of their Steamer "Tourist" is very gratifying to them, and a matter of great commercial importance to shippers of perishable products, fish and oysters, and that very many shipments of this sort have been handled from Bay Port wharf aforesaid by the Steamer Tourist since it began to run to Bay Port.

Affiant further says that Monaskon in Lancaster County is built at the terminus of a public road, and the pier head is built far out in the river below low water mark, and that a store and a post office are kept in a building near the shore end of the said wharf, and that the public have long been accustomed, and do now, use the said wharf, at will, and land any and all classes of vessels there when occasion requires.

Affiant further made oath that Whealton wharf is built far out into the navigable waters of the Rappahannock river, and that the shore end of the said wharf abuts upon a public street, road or thoroughfare which cannot be closed against the public; that it forms an appurtenance to and really a continuation of, a public street of the village of Whealton; that quite a large number of warehouses are built in a cluster upon and adjacent to the said wharf,

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and the said pier head, and many persons habitually conduct daily business upon the said wharf and pier head, and in the buildings set upon piling adjacent to and adjoining the said wharf and
80 pier head, and that all such persons, and the public generally come and go at pleasure, on foot, and with horses, or vehicles, or by boats from the river; that vessels of various kinds, great and small, are wont to use the said wharf and pier head almost daily. That artesian wells have been sunk out into the pier head, and are flowing out upon the said pier and wharf, for the use of the persons who need the water in conducting their business, and for other purposes. That the casings of these artesian wells pass down through or close beside the wharf structure and are cased below the river bottom and the mud of the river bottom, and are as clear and as effective for the purpose of supplying pure and fresh water as are similar wells sunk on shore. Affiant further made oath that Water View is built out into the navigable waters of the Rappahannock river, and that a road which to the best of the affiant's belief is a public road and worked as such by the county authorities of Middlesex county, branches out of the public road known as the "River Road" in Middlesex and Essex counties (and which approximately parallels the Rappahannock river on the south side, from Urbanna to Fredericksburg, by Tappahannock, and Port Royal, which road the affiant has often traveled for lack of convenient boat service on the Rappahannock river), at a point near "Churchview" in said Middlesex county, and runs to the said Water View wharf.

Affiant further says that wharfage has been regularly paid, or at least tendered, at each and every wharf used by the Steamer Tourist and mentioned in the Bill of the Weems Steamboat Company against People's Steamboat Company and others; that the receipts for wharfage filed as exhibits with the answer of the respondents are genuine, and are what each purports to be, a receipt for wharfage paid for the use of the wharf named thereon, and that wharfage has been paid at each of the wharves claimed to be controlled by the Weems Steamboat Company under leases, and that the wharfage at Water View was refused by the agent in charge, and was then remitted by check to A. B. Evans, and has not been returned, neither acknowledged, by the said Evans. That he expressed the package of envelopes containing wharfage at the wharves claimed by the Weems Steamboat Company, and that the express receipt is genuine, and that Bessie Chesley is employed by him in his office as clerk and stenographer, and that she prepared the envelopes and enclosed the cash and made the statements concerned with the payment of wharfage aforesaid.

WM. D. CARTER.

81 Sworn to and subscribed before me, the aforesaid notary, in my corporation aforesaid, this 25 day of April, 1903.

Witness my hand and Notarial Seal.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

Seal Tax exempt.

My commission expires Sept. 28, 1903.

5—181

Affidavit of E. M. Ware on Behalf of Respondents.

Filed April 30, 1903.

VIRGINIA, *County of Essex, To wit:*

Before me, H. Southworth, Clerk of the County Court in and for the County of Essex, State aforesaid, this day personally appeared in my clerk's office in my said county E. M. Ware and made oath that he is the Judge of the County Court of Essex County, and has resided in Tappahannock, and in the lower part of Essex for many years, and that he is thoroughly familiar with the situation and the physical character of Bowler's wharf, Ware's wharf and Tappahannock wharf. That Bowler's wharf extends into the navigable water of the Rappahannock river, and is owned by R. G. Neale in his own right and others, as shown by the records and that a public road leads from Center Cross in the said County to the shore end of the wharf structure at Bowler's. That very near the shore end of the said Bowler's wharf, and just above the said public road, and abutting upon the said public road is the store house in which is kept a public store and post office by R. G. Neale, and that on the other side and a little removed from the said public road is kept or was formerly kept another store, and that on the river shore a little below the shore end of the said wharf is a large Canning factory, and that very many people from Center Cross and surrounding section of Essex County, and from Ino in King and Queen County, and from a large section of the country around Ino, are accustomed to come by the public road from Center Cross to Bowler's wharf. That people frequent the place not only for shipping and receiving freight, but for the purpose of trading at the store, attending to and receiving their mail, and for delivering fruit and vegetables which are sold to the Canning factory aforesaid. That built upon piling adjoining and adjacent to the outer or channel end of the said wharf at
82 Bowler's is a large oyster house occupied and used by Garrett & Hunt in their business of buying and selling and shipping oysters in shell, and of opening, packing and shipping shucked oysters.

The affiant further says that he is also familiar with Ware's wharf that one of the roads leading thereto runs through affiant's farm & has been used uninterrupt-ly by the public since a wharf was first established there & was thrown open to the public at the request of R. L. Ware, owner of Ware's wharf and for many years lived in sight of the said Ware's wharf, and that the said wharf is the shipping place of a large section of the country including the town of Dunnsville and the village of Howertons, and that a public road leads from Howertons through Dunnsville and on towards the said Ware's wharf, and said road is constantly travelled by the public in coming to and going from the said wharf.

The affiant further makes oath that he has lived for some years in the town of Tappahannock, and that Tappahannock is the county seat of Essex county, and that there is at Tappahannock but one

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wharf projecting in the waters of the Rappahannock river. And that this said wharf is the shipping place not only for the people of Tappahannock, but for a large section of the country extending fifteen miles back in the country including the Post offices: Zaza, Dunbrooke, Rexburg, Battery, Mt. Landing & Millers, Brays and Pauls X Roads and which section is inhabited by a large population; the affiant further says that the Main street called Prince street of the said town of Tappahannock, ends at the river shore, and that another street one square above the said Main street called Queen street also ends at the river shore, and that along the river shore between the terminus of the said two streets is an open thoroughfare which has constantly been used for many years by the people at large in coming to the said Tappahannock wharf, without let, hindrance, or question; so far as affiant's knowledge extends; that many small boats, and schooners and other craft are accustomed to come to the said wharf from time to time, and to land at the said wharf, and there dispose of their cargoes, especially fish, and that many citizens of the country are accustomed to come with their teams to the said wharf, and to buy fish from the said boats landed there as aforesaid, and to remove the same over the said wharf; that other smaller boats are frequently landed at the beach, on the open space between the terminus of the two streets aforesaid, and that very many people are accustomed to come with their teams to buy fish and oysters on the said open lot of ground on the river shore between the terminus of the two streets aforesaid and in close proximity of the shore end of the wharf.

83 This affiant further says that prior of the inauguration of the schedule now being ran between Urbanna and Fredericksburg, travel between Tappahannock and other wharves on the Rappahannock river to Fredericksburg, and from Fredericksburg back to said wharves was slow, tedious and uncertain, in point of time, and expensive, compared with facilities now afforded by the new schedule by reason of the delays which were occasioned persons travelling in the direction of Fredericksburg by the Weems Line steamboat; that the service afforded the public by the People's line is an important one and promotes the interest and serves the convenience of a large proportion of the people of Essex and other counties along the Rappahannock river.

E. M. WARE.

Subscribed and sworn to before me the aforesaid clerk of the County Court in my office aforesaid this 25 day of April, 1903.

H. SOUTHWORTH, *Clerk*.

Affidavit of F. Lawson on Behalf of Respondents.

Filed April 30, 1903.

VIRGINIA, *County of Middlesex, To wit:*

Before me, H. C. Farinholt, a justice in and for the county of Middlesex, State aforesaid, this day personally appeared, in my said

county F. Lawson, and made oath that he is well acquainted with Bayport wharf on the Rappahannock river, and that the said wharf is immediately upon a public road leading from Owen Hill to the shore end of the said wharf; that there is a store house very near the shore end of the said wharf in which store house is kept a general stock of merchandise, and to which store and wharf very many people are constantly coming for the purpose of trading, receiving and shipping goods, and transacting such other business as they desire.

This affiant further says that the Weems Line Steamers frequently pass up and down the Rappahannock river without stopping at Bayport wharf. That before the steamer Tourist was put on the run between Fredericksburg and Urbanna, the people who were accustomed to use Bayport as their shipping point were often without any transportation from the said wharf for several days at a time;
84 that many of the boats of the Weems Line still pass Bayport wharf without coming in to the said wharf to discharge freight and passengers, or to receive freight and passengers. That the people of the country around Bayport and for several miles back from the river have long suffered serious inconvenience and loss from lack of regular shipping facilities from the said wharf, and have complained of the conduct of the Weems Steamboat Co. in failing to stop their boats regularly at the said Bayport wharf; that the service rendered by the People's Line Steamer is regular, and is of great benefit and advantage to a large number of people living near Bayport, or Owen Hill, and Laneview and the surrounding country, and that it would be a great hardship upon a large number of responsible citizens to be deprived of the service afforded them by the stopping of the steamer Tourist at the said Bayport wharf.

F. LAWSON.

Subscribed and sworn to before me, the aforesaid justice, in my said county this 25 day of April, 1903.

H. C. FARINHOLT, *J. P.*

Affidavit of H. N. Dyke on Behalf of Respondents.

Filed April 30, 1903.

VIRGINIA, *County of Middlesex, To-wit:*

Before me, H. C. Farinholt, a justice in and for the county of Middlesex, State aforesaid, this day personally appeared, in my said county H. N. Dyke, and made oath that he is well acquainted with Bayport wharf on the Rappahannock river, and that the said wharf is immediately upon a public road leading from Owen Hill to the shore end of the said wharf; that there is a store house very near the shore end of the said wharf in which store house is kept a general stock of merchandise, and to which store and wharf very many people are constantly coming for the purpose of trading, receiving and shipping goods, and transacting such other business as they desire.

This affiant further says that the Weems Line Steamers frequently pass up and down the Rappahannock river without stopping at Bayport wharf. That before the steamer Tourist was put on the run between Fredericksburg and Urbanna, the people who were accustomed to use Bayport as their shipping point were often
85 without any transportation from the said wharf for several days at a time; that many of the boats of the Weems Line still pass Bayport wharf without coming in to the said wharf to discharge freight and passengers, or to receive freight and passengers. That the people of the country around Bayport and for several miles back from the river have long suffered serious inconvenience and loss from lack of regular shipping facilities from the said wharf, and have complained of the conduct of the Weems Steamboat Co. in failing to stop their boats regularly at the said Bayport wharf; that the service rendered by the People's Line Steamer is regular, and is of great benefit and advantage to a large number of people living near Bayport, or Owen Hill, and Laneview and the surrounding country, and that it would be a great hardship upon a large number of responsible citizens to be deprived of the service afforded them by the stopping of the steamer Tourist at the said Bayport wharf.

H. N. DYKE.

Subscribed and sworn to before me, the aforesaid justice, in my said county this 24 day of April, 1903.

H. C. FARINHOLT, *J. P.*

Affidavit of C. B. Hundley on Behalf of Respondents.

Filed April 30, 1903.

VIRGINIA,
County of Middlesex, To-wit:

Before me, H. C. Farinholt, a justice in and for the county of Middlesex, State aforesaid, this day personally appeared, in my said county C. B. Hundley, and made oath that he is well acquainted with Bayport wharf on the Rappahannock river, and that the said wharf is immediately upon a public road leading from Owen Hill to the shore end of the said wharf; that there is a store house very near the shore end of the said wharf in which store house is kept a general stock of merchandise, and to which store and wharf very many people are constantly coming for the purpose of trading, receiving and shipping goods, and transacting such other business as they desire.

This affiant further says that the Weems Line Steamers frequently pass up and down the Rappahannock river without stopping at Bayport wharf. That before the steamer Tourist was put on the
86 run between Fredericksburg and Urbanna, the people who were accustomed to use Bayport as their shipping point were often without any transportation from the said wharf for several days at a time; that many of the boats of the Weems Line still pass Bayport wharf without coming in to the said wharf to discharge

freight and passengers, or to receive freight and passengers. That the people of the country around Bayport and for several miles back from the river have long suffered serious inconvenience and loss from lack of regular shipping facilities from the said wharf, and have complained of the conduct of the Weems Steamboat Co. in failing to stop their boats regularly at the said Bayport wharf; that the service rendered by the People's Line Steamer is regular, and is of great benefit and advantage to a large number of people living near Bayport, or Owen Hill, and Laneview and the surrounding country, and that it would be a great hardship upon a large number of responsible citizens to be deprived of the service afforded them by the stopping of the steamer Tourist at the said Bayport wharf.

C. B. HUNDLEY.

Subscribed and sworn to before me the aforesaid justice, in my said county this 24 day of April, 1903.

H. C. FARINHOLT, *J. P.*

Affidavit of Charley Trimyer on Behalf of Respondents.

Filed April 30, 1903.

VIRGINIA,

County of Middlesex, To-wit:

Before me, H. C. Farinholt, a justice in and for the county of Middlesex, State aforesaid, this day personally appeared, in my said county Charlie Trimyer, and made oath that he is well acquainted with Bayport wharf on the Rappahannock river, and that the said wharf is immediately upon a public road leading from Owen Hill to the shore end of the said wharf; that there is a store house very near the shore end of the said wharf in which store house is kept a general stock of merchandise, and to which store and wharf very many people are constantly coming for the purpose of trading, receiving and shipping goods, and transacting such other business as they desire.

87 This affiant further says that the Weems Line Steamers frequently pass up and down the Rappahannock river without stopping at Bayport wharf. That before the steamer Tourist was put on the run between Fredericksburg and Urbanna, the people who were accustomed to use Bayport as their shipping point were often without any transportation from the said wharf for several days at a time; that many of the boats of the Weems Line still pass Bayport wharf without coming in to the said wharf to discharge freight and passengers, or to receive freight and passengers. That the people of the country around Bayport and for several miles back from the river have long suffered serious inconvenience and loss from lack of regular shipping facilities from the said wharf, and have complained of the conduct of the Weems Steamboat Co. in failing to stop their boats regularly at the said Bayport wharf; that the service rendered by the People's Line Steamer is regular, and is of great benefit and advantage to a large number of people

living near Bayport, or Owen Hill, and Laneview and the surrounding country, and that it would be a great hardship upon a large number of responsible citizens to be deprived of the service afforded them by the stopping of the steamer Tourist at the said Bayport wharf.

CHARLIE TRIMYER.

Subscribed and sworn to before me, the aforesaid justice, in my said county this 25 day of April, 1903.

H. C. FARINHOLT, *J. P.*

Affidavit of A. Randolph Howard on Behalf of Respondents.

Filed April 30, 1903.

VIRGINIA, *Corporation of Fredericksburg, To-wit:*

Before me, Geo. W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State of Virginia, this day personally appeared in my said Corporation A. Randolph Howard, and made oath that he is a banker by profession, and is president of The Bank of Middlesex, located at Urbanna, Virginia; that he is also cashier of The Conway, Gordon and Garnett National Bank located in Fredericksburg, Virginia; that he is familiar with the character and financial standing of the business community
88 of Fredericksburg and also of that of the business men at Urbanna, and very many citizens along the Rappahannock river between Fredericksburg and the mouth of the Rappahannock river; that the names of the affiants signed to the affidavit taken before George W. Shepherd, Jr., notary public, on the 24th day of April, 1903, setting forth the value and importance of the facilities furnished to local commerce by the operation of the Steamer Tourist by People's Steamboat Company, which said affidavit appears to have been sworn to by some sixty odd of the business men of Fredericksburg, Virginia, includes the names of all the prominent merchants, wholesale and retail, in the City of Fredericksburg, and represents investments in commercial pursuits of much more than five hundred thousand dollars. That E. D. Cole is a member of the City Council of Fredericksburg, and Chairman of the Finance Committee of that body; that B. J. Marshall, and M. B. Rowe who have made affidavits as to the solvency of the People's Steamboat Company are respectable merchants and business men of high character and standing and that B. J. Marshall conducts the largest wholesale grocery business in the City of Fredericksburg; that William D. Carter is an attorney at law now of Fredericksburg, Virginia, and that he lived for some years at Tappahannock, Virginia, and is of good character and standing in both communities. That E. M. Ware is the Judge of the County Court of Essex County, and a man of standing and character in his county and community, and that Harrison Southworth is the clerk of Courts in Essex County. That C. B. Hundley is a merchant at Lane View, in Essex County, upon the line between

Essex and Middlesex counties, and is a man of high character and standing.

That to the best of affiant's belief, all of the parties whose affidavits have been taken and exhibited to the affiant, including those mentioned herein, to be used against the application of The Weems Steamboat Company on its application for a preliminary injunction against the People's Steamboat Company, are reputable citizens, and their affidavits entitled to full faith and credit.

A. RANDOLPH HOWARD.

Sworn to and subscribed before me, the aforesaid notary, in my Corporation aforesaid, this 27th day of April, 1903.

Witness my hand and Notarial Seal.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

Seal tax exempt.

Commission expires Sept. 28, 1903.

89 *Affidavit of Mrs. D. E. Smith, Trading as Mrs. D. E. Smith & Co., on Behalf of Respondents.*

Filed April 30, 1903.

VIRGINIA, *Corporation of Fredericksburg, To-wit:*

Before me, Geo. W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State of Virginia, this day personally appeared in my said Corporation Mrs. D. E. Smith, trading as Mrs. D. E. Smith & Co., and made oath that the operation of a steamboat on the Rappahannock river upon the run now being made by the Steamer "Tourist" operated by the People's Steamboat Company is a public necessity to the business interests of the City of Fredericksburg, and to the people who live in the counties abutting upon both sides of the Rappahannock river; that since the said steamer Tourist has been running many hundreds of people have visited Fredericksburg who did not formerly come, and who were unable to come for lack of adequate and convenient transportation for themselves and their property; that the travel and traffic mentioned has been practically created by the operation of the Steamer Tourist, as aforesaid, and is new business, which is valuable to those engaged in business in Fredericksburg, and, (as customers habitually protect themselves by buying in the most favorable market accessible to them) valuable to a very large number of the people who live on both sides of the Rappahannock river below Fredericksburg; that before the Steamer Tourist began making its regular trips on the Rappahannock river very few persons came to or went away from Fredericksburg by the Weems Line Steamboats, and the shipments of freight between Fredericksburg and points on the Rappahannock river were only a small fraction of the present volume of such shipments, and were inconsiderable.

MRS. D. E. SMITH & CO., *Millinery.*

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Sworn to and subscribed before me, the aforesaid notary, in my Corporation aforesaid, this 27 day of April, 1903.
Witness my hand and Notarial Seal.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

Seal tax exempt.
Commission expires Sept. 28, 1903.

90 *Affidavit of G. J. Dunn on Behalf of Respondents.*

Filed April 30, 1903.

VIRGINIA, *County of Middlesex, To wit:*

Before me, H. C. Farinholt, a justice in and for the county of Middlesex, State aforesaid, this day personally appeared, in my said county G. J. Dunn, and made oath that he is well acquainted with Bayport wharf on the Rappahannock river, and that the said wharf is immediately upon a public road leading from "Owen Hill" to the shore end of the said wharf; that there is a store house very near the shore end of the said wharf in which store house is kept a general stock of merchandise, and to which store and wharf very many people are constantly coming for the purpose of trading, receiving and shipping goods, and transacting such other business as they desire.

This affiant further says that the Weems Line Steamers frequently pass up and down the Rappahannock river without stopping at Bayport wharf. That before the steamer Tourist was put on the run between Fredericksburg and Urbanna, the people who were accustomed to use Bayport as their shipping point were often without any transportation from the said wharf for several days at a time; that many of the boats of the Weems Line still pass Bayport wharf without coming in to the said wharf to discharge freight and passengers, or to receive freight and passengers. That the people of the country around Bayport and for several miles back from the river have long suffered serious inconvenience and loss from lack of regular shipping facilities from the said wharf, and have complained of the conduct of the Weems Steamboat Co. in failing to stop their boats regularly at the said Bayport wharf; that the service rendered by the People's Line Steamer is regular, and is of great benefit and advantage to a large number of people living near Bayport, or Owen Hill, and Laneview and the surrounding country, and that it would be a great hard-ship upon a large number of responsible citizens to be deprived of the service afforded them by the stopping of the steamer Tourist at the said Bayport wharf.

G. J. DUNN.

Subscribed and sworn to before me, the aforesaid justice, in my said county this 24 day of April, 1903.

H. C. FARINHOLT, *J. P.*

91 *Affidavit of John A. Carleton on Behalf of Respondents.*

Filed April 30, 1903.

VIRGINIA, *County of Middlesex, To-wit:*

Before me, H. C. Farinholt, a justice in and for the county of Middlesex, State aforesaid, this day personally appeared, in my said county Jno. A. Carleton, and made oath that he is well acquainted with Bayport wharf on the Rappahannock river, and that the said wharf is immediately upon a public road leading from "Owen Hill" to the shore end of the said wharf; that there is a store house very near the shore end of the said wharf in which store house is kept a general stock of merchandise, and to which store and wharf very many people are constantly coming for the purpose of trading, receiving and shipping goods, and transacting such other business as they desire.

This affiant further says that the Weems Line Steamers frequently pass up and down the Rappahannock river without stopping at Bayport wharf. That before the steamer Tourist was put on the run between Fredericksburg and Urbanna, the people who were accustomed to use Bayport as their shipping point were, often without any transportation from the said wharf for several days at a time; that many of the boats of the Weems Line still pass Bayport wharf without coming in to the said wharf to discharge freight and passengers, or to receive freight and passengers. That the people of the country around Bayport and for several miles back from the river have long suffered serious inconvenience and loss from lack of regular shipping facilities from the said wharf, and have complained of the conduct of the Weems Steamboat Co. in failing to stop their boats regularly at the said Bayport wharf; that the service rendered by the People's Line Steamer is regular, and is of great benefit and advantage to a large number of people living near Bayport, or Owen Hill, and Laneview and the surrounding country, and that it would be a great hardship upon a large number of responsible citizens to be deprived of the service afforded them by the stopping of the steamer Tourist at the said Bayport wharf.

JNO. A. CARLETON.

Subscribed and sworn to before me, the aforesaid justice, in my said county this 24 day of April, 1903.

H. C. FARINHOLT, *J. P.*

92 *Affidavit of A. Randolph Howard on Behalf of Respondents.*

Filed April 30th, 1903.

VIRGINIA, *Corporation of Fredericksburg, To-wit:*

Before me, George W. Shepherd, Jr., a Notary Public in and for the Corporation of Fredericksburg, State of Virginia, this day personally appeared, in my said Corporation, A. Randolph Howard, and

made oath that he is a stockholder in "The Whealton Packing Company" and that the said Whealton Packing Company owns Whealton wharf on the Rappahannock river in Virginia; that he knows that the "valuable consideration" mentioned in the lease of the said Whealton wharf to The Weems Steamboat Company means, and is nothing more nor less than, a per cent. wharfage, which is to be paid by The Weems Steamboat Company to the said owner of Whealton wharf, which per cent. wharfage is computed upon the amount of receipts by the said Weems Steamboat Company for freight and passengers handled by the said The Weems Steamboat Company over the said wharf.

Affiant further made oath that the valuable consideration mentioned in the lease of Carter's wharf filed by The Weems Steamboat Company as an exhibit with their bill in their suit pending in the Circuit Court of the United States for the Eastern District of Virginia, against People's Steamboat Company and others also means nothing more nor less than a per cent. wharfage on the amount of business done by the boats of The Weems Steamboat Company over the said wharf.

A. RANDOLPH HOWARD.

Sworn to and subscribed before me, the aforesaid notary in my Corporation aforesaid, this 27th day of April, 1903.

[NOTARIAL SEAL.] GEO. W. SHEPHERD, JR.,
Notary Public.

Commission expires Sept. 28, 1903.

93 *Affidavit of Alex. K. Phillips on Behalf of Respondents.*

Filed April 30th, 1903.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Before me, Henry J. Gross, a Notary Public in and for the District of Columbia aforesaid, this day personally ap- *duly sworn, deposes and says that he formerly lived in the* peared, in my said District, Alex. K. Phillips, and being first duly sworn, deposes and says that he formerly lived in the City of Fredericksburg, in the State of Virginia, and at one time while residing at Fredericksburg aforesaid, he was the agent of the Inland and Seaboard Coasting Company, and that said company operated the Steamboat called "Lady of the Lake," upon the Rappahannock river; that said steamer was accustomed to land at any and all of the wharves then in use upon the said river, as occasion required, and did land for the purpose of receiving and discharging freight and passengers at the wharves owned, or claimed to be owned, by the Weems Steamboat Company; that the said Inland and Seaboard Coasting Company did land at the Weems Steamboat Company's wharf in the City of Fredericksburg upon one or more occasions, as circumstances necessitated, and that the Inland and Seaboard Coasting Company did, through its Fredericksburg agent, pay to the Weems Steamboat Company

through its agent at Fredericksburg at that time, William T. Tomlinson, the accustomed wharfage for such landing or landings.

The deponent further says that he was informed, at that time, by the Inland and Seaboard Coasting Company that the accustomed wharfage fees were paid to the owners of the various wharves at which their steamer "Lady of the Lake" stopped, and among other proprietors of wharves, paid wharfage fees to the Weems Steamboat Co., or to Henry Williams, the president and manager of said Weems Steamboat Company.

The affiant further says that the various vouchers of the Inland and Seaboard Coasting Company were destroyed by fire in this city, several years ago.

The affiant further says that he recalls upon one occasion that the "Lady of the Lake" reached Fredericksburg in advance of the Weems Steamboat Company's steamer, and that the "Lady of the Lake" landed at the Weems dock, and compelled the Weems Steam-
94 boat Company's boat, which arrived later thereon, to berth outside of the "Lady of the Lake," and discharge her passengers across the first named vessel.

Sworn to and subscribed before me, the aforesaid notary, in my said District of Columbia, this 27th day of April, 1903. Witness my hand and Notarial Seal.

[NOTARIAL SEAL.] HENRY J. GROSS,
Notary Public, D. C.

Affidavit of Henry Williams on Behalf of Plaintiff.

Filed April 30th, 1903.

STATE OF MARYLAND, *City of Baltimore, To-wit:*

I, Felix R. Sullivan, a Notary Public of the State of Maryland, in and for the City of Baltimore, do hereby certify that on this 29th day of April, 1903, personally appeared before me, Henry Williams, personally known to me, and made oath in due form of law that he had personal knowledge of the following facts, and that said facts as herein stated are true.

That in 1865 Captain Mason L. Weems of the City of Baltimore began to operate a line of steamers from the City of Baltimore to the City of Fredericksburg, in the State of Virginia, and that the said steamers stopped at the wharves then existing on the Rappahannock river.

That in September, 1874, the said Captan Mason L. Weems died, and that he, the affiant, took charge of the steamboat lines owned and operated by the said Captain Mason L. Weems, including the Rappahannock river route.

That from 1866 up until the affiant took charge of said Rappahannock river route, the said Mason L. Weems operated the said Rappahannock river route in conjunction with a Mr. Taylor, and others of Baltimore city.

That in the winter of 1874-1875 he, the affiant, as the agent of the

heirs and representatives of the said Mason L. Weems, purchased all the right, title, and interest of said Taylor and others in and to said Rappahannock river route, including the good will and wharf property belonging in any way to the said Taylor and his associates.

That from September, 1874, until December, 1892, he, the affiant, as agent of Mrs. Georgeanna Williams, his wife, and Mrs. Matilda S. Forbes, who were the sole devisees, legatees and representa-
95 tives of the said Captain Mason L. Weems, operated the said line of steamers, which was known during the lifetime of the said Captain Mason L. Weems, and up to 1892, as the "Weems Line of Steamers", on the Rappahannock river in the State of Virginia.

That the fee simple title to Port Royal wharf, in the County of Caroline, and Leedstown wharf, in the County of Westmoreland, became vested in the said Georgeanna Williams, and Matilda S. Forbes, upon the death of their said father in 1874 as aforesaid, and upon the purchase by the affiant of any interest in and to said property owned by the said Taylor and others; and that the said fee simple in said wharves, acquired as aforesaid, was conveyed by the said Georgeanna Williams, and Matilda S. Forbes to the Weems Steamboat Company in 1892. That he, the affiant, as trustee of the estate of Theodore Weems, deceased, held and owned a small undivided interest in the fee simple title to the said Leedstown wharf, in trust for the said Georgeanna Williams, and Matilda S. Forbes, and joined in the said deed from Georgeanna Williams and Matilda S. Forbes to the said Steamboat Company, in order that his said undivided interest as trustee might pass to the said Weems Steamboat Company. See deed of Dec. 20, 1865, from Thomas H. Massey.

That the fee simple title to the Tappahannock wharf in the County of Essex, also became vested in the said Georgeanna Williams and Matilda S. Forbes upon the death of their said father, as aforesaid, in 1874, and upon the purchase by the affiant of any interest in and to said property owned by the said Taylor and associates, and was conveyed by the said Georgeanna Williams and Matilda S. Forbes to the Weems Steamboat Company on the 4th day of January, 1892, but that in 1895 R. E. Wynn, and Fannie B. Wynn, his wife, of the County of Essex, State of Virginia, claimed that in rebuilding the pier known as "Tappahannock Wharf," the said pier projected over on the property owned by the said R. E. Wynn and wife, and that in order to make perfect the fee simple title of the said Weems Steamboat Company to Tappahannock wharf, the said Weems Steamboat Company purchased from the said Wynn and wife, the land described in deed on the 10th day of October, 1895, a copy of which is printed as "Exhibit D" in the bill of complaint filed in the case of "The Weems Steamboat Company *vs.* The People's Steamboat Company *et al.*" See Plat of Wynn purchase attached hereto.

That the fee simple to Sharp's wharf in the County of Richmond, was acquired in 1876 by the said Georgeanna Williams and Matilda S. Forbes, by a deed dated April 28, 1876, and recorded in Liber 32,
folio 162, one of the Land Records of Richmond County,
96 from Claus L. Clauson; see deed attached hereto and said fee simple title was conveyed by the said Georgeanna Williams

and Matilda S. Forbes to the said Weems Steamboat Company, on the 4th day of January, 1892.

That in December, 1891, a corporation was formed under the laws of the State of Maryland, which purchased for valuable consideration, all the right, title, and interest of the said Georgeanna Williams and Matilda S. Forbes, in and to the wharves known as "Port Royal wharf," -Tappahannock wharf," "Sharp's wharf," and "Leedstown wharf," and all the right, title and interest of the said Georgeanna Williams and Matilda S. Forbes in and to the Rappahannock river route, including all the leases or interests in wharf property and certain steamboats used in operating said Rappahannock river route, and,

That the said corporation was named, and is still called "The Weems Steamboat Company of Baltimore City," and that the said affiant has been since its organization, and is now, the president and general manager of said corporation, and personally conducts and superintends the operation of its business, including the carriage of passengers and freight, as a common carrier on the Rappahannock river, its tributaries, and other inland waters in the States of Maryland and Virginia.

That the said Weems Steamboat Company, by deed dated November 2nd, 1901, acquired the fee simple title to Wellford's wharf in the County of Richmond, from Henry T. Douglass, Jr., and wife, for valuable consideration.

That the fee simple title to said Port Royal wharf, Leedstown wharf, Tappahannock wharf, and Sharp's wharf, has been in the said Weems Steamboat Company, and said Georgeanna Williams and Matilda S. Forbes, from 1874 down to the present date, except as to what undivided interest held by the affiant in Leedstown wharf as hereinbefore set forth And except Sharp's wharf which was purchased in 1876 as aforesaid.

That the said Weems Steamboat Company acquired the fee simple title to Wellford's wharf shortly after said wharf was built.

That the said Weems Steamboat Company is, and it and its predecessors in title have been for many years, the fee simple owners of the lands upon which said wharves, and the piers constituting part of said wharves, are built, and have been, and now is in exclusive, notorious, and open possession of said wharves and lands.

That The Weems Steamboat Company has at all times complied with all the laws of the State of Virginia in all respects.

97 That no toll or wharfage has ever been received from persons using said wharves, by the said Weems Steamboat Company, or its predecessors in title, except that said Taylor allowed the wharf agent at Port Royal wharf to collect wharfage from said vessels landing at said wharf, and to credit said amount so received to his salary as agent, but that this only happened in rare instances, and said practice was discontinued by the present owners more than twenty years ago.

That neither the Weems Steamboat Company, nor its predecessors in title and ownership have been wharfingers, and that the said wharves are not now, and have never been public wharves.

COPY BOUND

That the lands upon which the said wharves are built, were acquired for erection and maintaining private wharves for the sole use of the Weems Steamboat Company, and its predecessors in title and ownership.

That the said Weems Steamboat Company is not trying to perpetuate a monopoly, and has never, and does not now, deny the right of the People's Steamboat Company, or any other person, of navigating the Rappahannock river, but simply asserts its rights to the exclusive use of its own property.

That the acquisition of the land, and the building of the said wharves, has cost in the neighborhood of $50,000.00 and that the average annual cost of keeping the said wharves in safe repair, is any where from $5,000 to $10,000.00.

That the Weems Steamboat Company is the lessee for valuable consideration, of the following wharves on the Rappahannock river, and the lands on which said wharves are built:

Carter's wharf, in Richmond County,
Naylor's Hole, in Richmond County,
Ware's wharf, in Essex County,
Bowler's wharf, in Essex County,
Bay Port, in Middlesex County,
Monaskon, in Lancaster County,
Wheelton, in Richmond County,
Water View, in Middlesex County.

and that the said leases to said wharves referred to in bill of complaint filed in the case of "The Weems Steamboat Company *vs.* People's Steamboat Company," in the United States Circuit Court for the Eastern District of Virginia, are the leases by which the said Weems Steamboat Company, now claims the exclusive use of the wharves mentioned in the said leases, as therein set forth, and that the copies of said leases filed as exhibits to said bill, are true copies.

98 That the said Weems Steamboat Company, and its predecessors in ownership, exclusively leased and used the said leased wharves for many years prior to the filing of said bill, except as against sail vessels, and that the lessor of said wharves owned said wharf property, and have the right to lease the same to the said Weems Steamboat Company.

That since 1874, or from the dates of building said wharves, to the present date, the said Weems Steamboat Company, and its predecessors in title, have had the exclusive use of Carter's wharf, Naylor's Hole, Ware's wharf, Bowler's wharf, Bay Port, and Monaskon, for wharf purposes.

That Wheelton wharf, Naylor's Hole, Bowler's, and Water View, were built in part with money advanced by the Weems Steamboat Company, and ever since their erection, the Weems Steamboat Company, and its predecessors, have had the exclusive and sole use of said property, except that non-competing sail vessels were allowed to land occasionally at some of said wharves, provided said sail vessels did not occupy said wharves to the exclusive or detriment of steamers of the Weems Steamboat Company, and its predecessors in ownership

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and title. See agreement of April 13, 1892, between Williams, agent, and Whealton.

That the Weems Steamboat Company, and its predecessors in title, have leased Water View wharf since the year 1879, or 1880, when said wharf was built.

That since 1874 to the present date, he, the affiant, has never received notice or complaint that any of said wharves now owned or leased by the said Weems Steamboat Company, obstructed the navigation of the water course upon which said wharves are located, or that the said wharves, or any of them, encroach on any public landing as to prevent the free use thereof, and that said wharves are now, and have always been, private wharves.

That it has always been the fixed and invariable policy of the Weems Steamboat Company, and its predecessors in ownership of said steamboat line, to forbid the use of any of said wharves for any purpose by any steamers competing, or attempting to compete, with the steamers owned by it or its predecessors in title, but that it has always allowed small sail boats to land at said wharves to bring freight, or to take away freight, transported, or to be transported by the steamers of the said Weems Steamboat Company, or its predecessors in ownership; and, in order to develop the country, and to increase its business, it has allowed oyster packers, or dealers, to build warehouses adjoining, but not on said wharves, wherein oysters could be packed for transportation on its steamers, and that it
99 has not deemed it necessary to exclude all persons from said wharves except passengers or shippers on said steamboat line, but that said Weems Steamboat Company, and its predecessors in ownership, have always notified the public that said wharves were not public wharves, and have not allowed large sail boats of any kind to land at the wharves owned or controlled by it, except upon rare occasions, when it permitted said landing as a favor to some patron of its line; and neither it, nor its predecessors in ownership, have ever at any time received wharfage from said wharves owned by it, or acquiesced in any use of said wharves by the public except as herein stated.

That the said wharves owned by the said Weems Steamboat Company, have been for many years, and are now, in charge, personal control, and exclusive possession, of its agents appointed by it and its predecessors in title, which said agents represent said Weems Steamboat Company.

That early in the '80's, a steamboat known as "The Lady of the Lake" made two or three trips on the Rappahannock river, but he, the affiant, knows that neither he as agent, nor the owners of said line, ever received wharfage from said steamer "Lady of the Lake," or from any one else.

That the Weems Steamboat Company is now operating a steamer known as the "Caroline," which leaves Fredericksburg Monday, Wednesday, and Friday, and runs down the Rappahannock river as far as Urbanna, and leaves the latter place on Tuesdays, Thursdays and Saturdays, on practically the same schedule as the Steamer "Tourist", and that the said steamer "Caroline" has a contract with

the United States Government to carry the United States mail on the said route. That the said Steamer "Caroline" on her trips stops at most of said wharves regularly between Fredericksburg and Urbanna, but at all of said wharves if signalled.

That the steamers of the Weems Steamboat Company between Baltimore and Fredericksburg stops four times at Bay Port, and other wharves on the Rappahannock river, and that the steamer of the Weems Steamboat Company plying between Fredericksburg, Baltimore and Norfolk, stops twice at Bay Port and other wharves on the river, and that Bay Port has twelve boats a week stopping there, going and coming from Baltimore, Fredericksburg and Norfolk, if said Steamer Caroline is signalled.

That the rates for passengers and freight on the steamers of the Weems Steamboat Company are fair and reasonable, and generally lower than the rates charged for similar service by persons and corporations engaged in water transportation, and that every effort has been made by the Weems Steamboat Company, and its pre-
100 decessors in title, to develop the country on both sides of the Rappahannock river, and furnish it proper transportation facilities, and have never charged wharfage to its patrons on goods or passengers landed, or taken from said wharves.

That he, the affiant, never made any statement that he would abandon the upper part of the Rappahannock river were it not for the mail contract.

That the said Weems Steamboat Company, and its predecessors in title, have at all times paid taxes to the proper and duly authorized county and State officers on the wharves owned by it in fee simple. And that annexed hereto are the receipts for said taxes, for recent years, and checks paid for taxes on Port Royal wharf for 1900 and 1902.

That a package was delivered by Adams Express Company to affiant, and that upon opening same he found small envelopes marked "Wharfage," from the People's Steamboat Company, for use of certain of the wharves owned by the Weems Steamboat Company, but that he, as president of the Weems Steamboat Company, refused to accept payment of wharfage for the reason that the wharves were private wharves, and intended for the exclusive use of the Weems Steamboat Company, and not for rent, and that it was not to the advantage of the said Weems Steamboat Company to allow any steamers than its own to land at any of the said wharves owned by it.

That he received a communication from W. D. Carter, dated Fredericksburg, Virginia, December 6, 1902, a[illegible] that a true copy of the said communication is printed in the said [illegible] of complaint marked "Exhibit T."

HENRY WILLIAMS.

Sworn to and subscribed before me, the aforesaid notary, in the City of Baltimore, State of Maryland, this 29th day of April, 1903. Witness my hand and notarial seal.

[NOTARIAL SEAL.] FELIX R. SULLIVAN,
Notary Public.

Felix R. Sullivan, No. 25 South Street, Baltimore, Md.

101 Weems St. Boat Co. Washington District.

To Frank Garland, Treasurer of Richmond County, Virginia, Dr.

1901.	State tax, 30 cents on the $100.	State school tax, 10 cts. on $100.	County levy, 35 cents on the $100.	County & district school taxes, 20 cts. on the $100.	Road tax, 15 cts. on the $100.	Total amount of taxes.
Capitation						
On Personal Property ...						
On Land	.....	.....	7.87	4.50	3.38	15.75
Total.						
5 per cent. Penalty.....						

Received Payment,

FRANK GARLAND, *Treasurer.*

Endorsed:

Richmond Co. Taxes,
15.75
Oct. 21, 1901.

D VERTICAL IN BOOK

102 Weems Steam Boat Co.

Washington District.

To Frank Garland, Treasurer of Richmond County, Virginia, Dr.

1902.	State tax, 30 cents on the $100.	State school tax, 10 cts. on $100.	County levy, 35 cents on the $100.	County & district school taxes, 20 cts. on the $100.	Road tax, 15 cts. on the $100.	Total amount of taxes.
Capitation.....						
On Personal Property			7.87	4.50	3.38	15.75
On Land.....	.....	.....				
Total.....						
5 per cent. Penalty.....						

Received Payment,

FRANK GARLAND, *Treasurer.*

Endorsed:

F. Garland, Treasurer of Richmond Co., Va.
25.55
Dec. 10, 1902.

103 Weems Steam Boat Co. Marshall District.

To Frank Garland, Treasurer of Richmond County, Virginia, Dr.

1902.	State tax, 30 cents on the $100.	State school tax, 10 cts. on $100.	County levy, 35 cents on the $100.	County & district school taxes, 20 cts. on the $100.	Road tax, 15 cts. on the $100.	Total amount of taxes.
Capitation.....						
On Personal Property....						
On Land.....	.....	.....	4.90	2.10	2.80	9.80
Total.....						
5 per cent. Penalty						

Received Payment,

FRANK GARLAND, *Treasurer.*

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1899.

	No. —.	State tax, 30 cents on the $100.	State school tax, 10 cts. on $100.	County levy, 30 cents on the $100.	County & district school taxes, 20 cts. on the $100.	Road tax, 15 cts. on the $100.	Total amount of taxes.
Wharf at Leedstown.	Head Tax—State $1.00						
	County, 50 cents	.....	.....	.....	.....	.....	3.30
	Property, $—.....	State taxes	.....	.....	.....	.....	2.20
	Value:	claimed to					
	— Acres, $1100.....	have been	.....	3.30	2.20	1.65	1.65
	— " $——.....	paid to					
	— " $——.....	Auditor.					
	Total	....	.....	.....	.....	.....	7.15
							.36
	Penalty 5 per cent.....	.....	.....	.....	.....	.....	7.51

Received Payment,

B. WILKINS,
Dp. Treasurer.

Endorsed:

Treas. of West. Co., Va.
7.51.
Jul- 3, 1901.

AND VERTICAL IN BOOK

105 Weems Steam Boat Co. Washington District.

To R. H. Stuart, Treasurer of Westmoreland County, Virginia, Dr.

1900.

No. —.	State tax, 30 cents on the $100.	State school tax, 10 cts. on $100.	County levy, 30 cents on the $100.	County & district school taxes, 20 cts. on the $100.	Dog tax, M., 50 cts.; F., $1.00.	Road tax, 15 cts. on the $100.	Total amount of taxes.
Lot at Leedstown. Head tax—State $100 / County, 50 cents	.....	.....	.....	.....	.....	.....	4.40
Property, $——.....	State taxes	.....	.....	.....	.....	.....	2.20
Value:	claimed to	.....	.....	.....	.....	.....	2.20
— Acres, $1100.....	have been	.....	4.40	2.20	.....	2.20	8.80
— " $——.....	paid to						.44
— " $——.....	Auditor.	.....	.....	.....	.....	.....	9.24
							.10
Total.....	.....	.....	.....	.....	.....	.....	9.34
Penalty 5 per cent.....			.....	.....?			

Received Payment,

BUSH WILKINS, *Dp. Treasurer.*

Endorsed:
Treas. West. Co.
9.34
Jun. 25, 1901.

THIS PAGE BOUND

To R. H. Stuart, Treasurer of Westmoreland County, Virginia, Dr.

1901.

No. —.	State tax, 30 cents on the $100.	State school tax, 10 cts. on $100.	County levy, 40 cents on the $100.	County & district school taxes, 20 cts. on the $100.	Dog tax, M., 50 cts.; F., $1.00.	Road tax, 20 cts. on the $100.	Total amount of taxes.
Head Tax—State $1.00 County, 50 cents	.....	.....	.....	.....	.....	.....	4.40
Property, $——.....	.....	.....	.....	.....	.....	.....	2.20
Value: Whf. Acres, $1100..... At Acres $—— ..... Leedstown $——.....	Claimed to have been paid to Auditor.	.....	4.40	2.20	.....	2.20	2.20
Total.....	.....	.....	.....	.....	.....	.....	8.80
							.44
							9.24
Penalty 5 per cent.....	.....	.....	.....	.....	.....	.....	.10
							9.34

.....?

Received Payment, BUSH WILKINS, *Dep. Treasurer.*

Endorsed:
West. Co. Taxes
9.34
Jan. 28, 1901.

D VERTICAL IN BOOK

107 Weems Steam Boat Co. Washington District.

To R. H. Stuart, Treasurer of Westmoreland County, Virginia, Dr.

1902.

No. —.	State tax, 30 cents on the $100.	State school tax, 10 cts. on $100.	County levy, 40 cents on the $100.	County & district school taxes, 20 cts. on the $100.	Dog tax, M., 50 cts.; F., $1.00.	Road tax, 20 cts. on the $100.	Total amount of taxes.
Head Tax—State $1.00 } County, 50 cents ..... }	.....	.....	.....	.....	.....	.....	4.40
Property, $——.....	State tax	.....	.....	.....	.....	.....	2.20
Value: Whf. at $——... ..... Leedstown ..... $1100.....	claimed to have been paid to Auditor.	.....	4.40	2.20	.....	2.20	2.20
Total.....	.....	.....	.....	.....	.....	.....	8.80
							.44
Penalty 5 per cent.....	.....	.....	.....	.....	.....	.....	.10
							9.34

.....?

Received Payment,

B. WILKINS, *Dep. Treasurer.*

Endorsed:
Treas. Westmoreland Co.
9.34
Dec. 18, 1902.

THIS PAGE BOUND

108 Weems Steamboat Co. (Balto., Md.), Dr.

1900. To Treasurer Essex County, Va. Number capitations.	State tax. $ cts.	State school. $ cts.	Co. levy. $ cts.	Road tax. $ cts.	County school. $ cts.	District school. $ cts.	Total tax. $ cts.
Town							
Whf. & Pier, Val. $2,250.00			4 50	3 37	1 13	3 37	12 37
Part Lot 24, Val. $300.00			60	45	15	45	1 65
Prop., income, etc., Val. $—							14 02
5 per cent added							70
							14 72

Feb. 18th, 1901.

Received Payment,

C. B. NEWBILL, *Dep'y Treasurer.*

Endorsed:

Essex Co. Taxes.
14.72
Feb. 21, 1901.

1901. To Treasurer Essex County, Va. Number capitations.	State tax. $ cts.	State school. $ cts.	Co. levy. $ cts.	Road tax. $ cts.	County school. $ cts.	District school. $ cts.	Total tax. $ cts.
Town Property.....							
Wharf & Pier, Val. $2000.00.	.....	.....	5 00	3 00	1 00	3 00	12 00
Part Lot 24, Val. $300.00 ...	.....	.....	75	45	15	45	1 80
Prop. income, etc., Val. $—..	.....	.....	.....	.....	.....	.....	13 80
5 per cent. added.....	.....	.....	.....	.....	.....	.....	69
							14 49

April 11th, 1902.

Received Payment,

C. B. NEWBILL,
Dep'y Treasurer.

Endorsed:

Essex Co. Taxes.
14.49.
Apr. 15, 1902.

THIS PAGE BOUND VERTICAL IN BOOK

110 Weems Steamboat Co., Dr.

To Board Trustees, Tappahannock, Va.,

For Taxes for the year 1900.

	Value.	Total Tax.
Land and buildings	$2,550.00	
Property, income, etc.		$5.10

Received Payment.

J. T. ROBINS, *Sergeant.*

Dec. 5th, 1900.

Endorsed:

Board Trustees.

Tappk., Va.

5.10

Dec. 7, 1900.

The Weems Steamboat Company

of Baltimore City.

No. 5248 BALTIMORE, *Febry.* 22, 1900.

National Bank of Commerce,

Pay to the order of Mr. D. B. Powers
Twenty-two.....90/100 Dollars.
$22-90/100....

HENRY WILLIAMS, *President.*

(Paid)

111 Endorsed:

Pay to the order of Conway, Gordon & Garnett

D. B. Powers.

Pay to the order of Nat'l Exchange Bank, Baltimore.

Conway, Gordon & Garnett,

Fredericksburg, Va.

(16)

Received Payment, Endorsements Guaranteed.

Feb. 2[illegible], 1900,

The National Exchange Bank, of Baltimore, Md.

The Weems Steamboat Company
of Baltimore City.

No. 6630. BALTIMORE, *Jany.* 7, 1902.

National Bank of Commerce,

Pay to the order of Mr. A. F. Carter, Collector,
Six.....x/100 Dollars,
Taxes Port Royal Wharf (Corporation Tax)
$6.00

HENRY WILLIAMS, *President.*

(Paid)

Endorsed:
A. F. Carter, Collector.
Pay to the order of Miss E. G. Powers
D. B. Powers.
Miss E. G. Powers
Mrs. M. D. Chamlee,
318 Broad St.,
M. Crighton.

112 Pay to the order of any Bank or Broker
Mar. 10, 1902,
The First National Bank of Richmond, Va.
John M. Miller, Jr., Cashier.

Pay to the order of any Bank or Broker
Feb. 11, 1902.
The First National Bank of Richmond, Va.
John M. Miller, Jr., Cashier.

No. 12
Received Payment, Endorsements Guaranteed,
National Union Bank of Maryland, Baltimore, Md.

No. 12
Received Payment, Endorsements Guaranteed,
National Union Bank of Maryland, Baltimore, Md.

Paid
March 11, 1902, Nat'l Bank of Commerce
Baltimore, Md.

(Here follow facsimiles marked pp. 113, 114, 115, 116, and 117.)

Assessment for the year 1899 of the Property of Express Compani
for the Transportation of Passengers or Freight, pursuant to

NAME OF COMPANY.	LOCATION OF PROP
Albemarle Steam Navigation Company	Franklin, Southampton c
Baltimore, Chesapeake and Richmond Steamboat Company	Yorktown, York County.
Baltimore Steam Packet Company	Norfolk city. Property i " Leased pr " " City Point, Prince George
Clyde Steamship Company	In the State
Mattaponi Steamboat Company	King & Queen county
Merchants' and Miners' Transportation Company	Norfolk city " Leasehold p
Old Dominion Steamship Company	Norfok city Richmond city Smithfield, Isle of Wight
Virginia Navigation Company	Richmond city
Warwick Park Transportation Company	Henrico county
Weems Steamboat Company	Fredericksburg city Caroline county Westmoreland county Richmond county Essex county Middlesex county Lancaster county
Adams Express Company	In the State
Southern Express Company	In the State
United States Express Company	In the State

This is to certify that the foregoing is a true copy of the ass

mpanies and Steamship and Steamboat Companies, which run Steamships, Steamboats, Vessels, Barges, or other, Floating Property ant to Sections 21, 22 and 23 of the Act imposing Taxes, approved March 6, 1890, as amended by act approved March 8, 1894.

OF PROPERTY.	Value of all express cars, steamships, steamboats or other floating property, their machinery and equipment.	Value of all depots, wharves, sheds, offices, stores, docks, machine shops, granaries, elevators and other buildings.	Value of all real estate and personal property not included in the foregoing classification.	Value of all miscellaneous property.	Total value of all property.	Tax at 30c. on $100 valuation for support of the government.	Tax at 10c. on $100 valuation for support of public free schools.	Net earnings in excess of $6000.	Tax on net earnings in excess of $6000 at one per cent.	Mileage operated by express companies in Virginia.	License tax of express companies.	TOTAL TAX.
npton county	$4,500 00	$ 500 00			$5,000 00	$15 00	$5 00	$119 55	$1 20			$21 20
ounty		500 00			500 00	1 50	50					2 00
perty in fee		121,800 00			121,800 00							
sed property, land		30,000 00			30,000 00							
" b'l'dgs.		16,400 00			16,400 00							
George county		2,000 00			2,000 00							
		170,200 00			170,200 00	510 60	170 20					680 80
				1,500 00	1,500 00	4 50	1 50					6 00
unty	3,000 00				3 000 00	9 00	3 00					12. 00
	7,500 00	150,000 00		500 00	158,000 00							
ehold property			8,200 00		8,200 00							
	7,500 00	150,000 00	8,200 00	500 00	166,200 00	498 60	166 20					664 80
	97,000 00		250,000 00		347,000 00							
			33,252 00		33 252 00							
Wight county			4,000 00		4,000 00							
	97,000 00		287,252 00		384,252 00	1,152 75	384 25					1,537 00
	85,000 00				85,000 00	255 00	85 00					340 00
		500 00	500 00		1,000 00	3 00	1 00					4 00
y			3,000 00		3,000 00							
			600 00		600 00							
nty			500 00		500 00							
			1,000 00		1,000 00							
			1,000 00		1,000 00							
			2,500 00		2,500 00							
			500 00		500 00							
			9,100 00		9,100 00	27 30	9 10					36 40
				13,263 04	13,263 04	39 78	13 26			942	$ 300 00	353 04
			2,850 00	19,244 00	22,094 00	66 27	22 09			2,332	500 00	588 36
			1,451 03		1,451 03	4 35	1 45			96½	300 00	305 80
Total	$197,000 00	$321,700 00	$309,353 03	$34,507 04	$862,560 07	$2,587 65	$862 55	$119 55	$1 20	3,370½	$1,100 00	$4,551 40

COMMONWEALTH OF VIRGINIA,

Office of The Board of Public Works,

Richmond, July 16, 1899.

assessment of the property of Express, Steamboat and Steamship Companies, &c., by The Board of Public Works for the year 1899.

Assessment for the year 1900 of the Property of Express Companies and Steamship and Steamboat Companies, which run St
for the Trnsportation of Passengers or Freight, pursuant to Sections 21, 22 and 23 of the Act imposing Taxes, approved

NAME OF COMPANY.	LOCATION OF PROPERTY.	Value of all express cars, steamships, steamboats or other float'g property, their machinery and equipment.	Value of all depots, wharves, sheds, offices, stores, docks, machine shops, granaries, elevators and other buildings.	Value of all real estate and personal property not included in the foregoing classification.	Value of all miscellaneous property.	Total value of all property.
Albemarle Steam Navigation Company	Franklin, Southampton county	$5,000 00	$250 00			$5,250
Baltimore, Chesapeake and Richmond Steamboat Company	Yorktown, York County		500 00			500
	Gloucester Point, Gloucester county		1,200 00	580 00		1,780
			1,700 00	580 00		2 280
Baltimore Steam Packet Company	Norfolk city. Property in fee		121,800 00			121,800
	" Leased property, land		30,000 00			30,000
	" " " b'l'dgs.		16,400 00			16,400
	City Point, Prince George county		2,000 00			2,000
			170,200 00			170,200
Clyde Steamship Company	In the State				1,500 00	1,500
Merchants' and Miners' Transportation Company	Norfolk city	7,500 00	150,000 00		500 00	158,000
	" Leasehold property			8,200 00		8,200
		7,500 00	150,000 00	8,200 00	500 00	166,200
Norfolk and Washington, D. C., Steamboat Company	Alexandria City		8,000 00			8,000
Old Dominion Steamship Company	Norfok city	39,500 00	200,000 00			239,500
	Elizabeth City county, Hampton	50,000 00				50,000
	Isle of Wight county, Smithfield	14,000 00	4,000 00			18 000
	Nansemond county, Suffolk	6 000 00	4,000 00			10,000
	Richmond city		33,252 00			33,252
		109,500 00	241,252 00			350,752
Virginia Navigation Company	Richmond city	75,000 00				75,000
Virginia Steam Navigation Company—Mattaponi River	King and Queen county	5,000 00				5,000
Warwick Park Transportation Company	Henrico couuty			500 00		500
Weems Steamboat Company	Fredericksburg city			3,000 00		3,000
	Caroline county			600 00		600
	Westmoreland county			500 00		500
	Richmond county			1,000 00		1,000
	Essex county			1,000 00		1,000
	Middlesex county			2,500 00		2,500
	Lancaster county			500 00		500
				9,100 00		9,100
Adams Express Company	In the State				12,873 55	12,873
Southern Express Company	In the State			2,850 00	19,351 00	22,201
United States Express Company	In the State			1,579 03		1,579
	Totai	$202,000 00	$571,402 00	$22,809 03	$34,224 55	$830,43

COMMONWEALTH

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This is to certify that the foregoing is a true copy of the assessment of the property of Express, Steamboat and Steamshi

nd Steamboat Companies, which run Steamships, Steamboats, Vessels, Barges, or other Floating Property, 3 of the Act imposing Taxes, approved March 6, 1890, as amended.

equipment.	Value of all depots, wharves, sheds, offices, stores, docks, machine shops, granaries, elevators and other buildings.	Value of all real estate and personal property not included in the foregoing classification.	Value of all miscellaneous property.	Total value of all property.	Tax at 30c. on $100 valuation for support of the government.	Tax at 10c. on $100 valuation for support of public free schools.	Net earnings in excess of $6000.	Tax on net earnings in excess of $6000 at one per cent.	Mileage operated by express companies in Virginia.	License tax of express companies.	Total Tax.
	$250 00	.....	.....	$5,250 00	$15 75	$5 25	.....	.....	.....	.....	$21 00
	500 00	.....	.....	500 00	.....	.....	.....	.....	.....	.....	.....
	1,200 00	580 00	.....	1,780 00	.....	.....	.....	.....	.....	.....	.....
	1,700 00	580 00	.....	2 280 00	6 84	2 28	.....	.....	.....	.....	9 12
	121,800 00	.....	.....	121,800 00	.....	.....	.....	.....	.....	.....	.....
	30,000 00	.....	.....	30,000 00	.....	.....	.....	.....	.....	.....	.....
	16,400 00	.....	.....	16,400 00	.....	.....	.....	.....	.....	.....	.....
	2,000 00	.....	.....	2,000 00	.....	.....	.....	.....	.....	.....	.....
	170,200 00	.....	.....	170,200 00	510 60	170 20	.....	.....	.....	.....	680 80
	.....	.....	1,500 00	1,500 00	4 50	1 50	.....	.....	.....	.....	6 00
	150,000 00	.....	500 00	158,000 00	.....	.....	.....	.....	.....	.....	.....
	.....	8,200 00	.....	8,200 00	.....	.....	.....	.....	.....	.....	.....
	150,000 00	8,200 00	500 00	166,200 00	498 60	166 20	.....	.....	.....	.....	664 80
	8,000 00	.....	.....	8,000 00	24 00	8 00	3,400 00	34 00	.....	.....	66 00
	200,000 00	.....	.....	239,500 00	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	50,000 00	.....	.....	.....	.....	.....	.....	.....
	4,000 00	.....	.....	18 000 00	.....	.....	.....	.....	.....	.....	.....
	4,000 00	.....	.....	10,000 00	.....	.....	.....	.....	.....	.....	.....
	33,252 00	.....	.....	33,252 00	.....	.....	.....	.....	.....	.....	.....
	241,252 00	.....	.....	350,752 00	1,052 25	350 75	.....	.....	.....	.....	1,403 00
	.....	.....	.....	75,000 00	225 00	75 00	.....	.....	.....	.....	300 00
	.....	.....	.....	5,000 00	15 00	5 00	.....	.....	.....	.....	20 00
	.....	500 00	.....	500 00	1 50	50	.....	.....	.....	.....	2 00
	.....	3,000 00	.....	3,000 00	.....	.....	.....	.....	.....	.....	.....
	.....	600 00	.....	600 00	.....	.....	.....	.....	.....	.....	.....
	.....	500 00	.....	500 00	.....	.....	.....	.....	.....	.....	.....
	.....	1,000 00	.....	1,000 00	.....	.....	.....	.....	.....	.....	.....
	.....	1,000 00	.....	1,000 00	.....	.....	.....	.....	.....	.....	.....
	.....	2,500 00	.....	2,500 00	.....	.....	.....	.....	.....	.....	.....
	.....	500 00	.....	500 00	.....	.....	.....	.....	.....	.....	.....
	.....	9,100 00	.....	9,100 00	27 30	9 10	.....	.....	.....	.....	36 40
	.....	.....	12,873 55	12,873 55	38 61	12 87	.....	.....	953	1,250 00	1,301 48
	.....	2,850 00	19,351 00	22,201 00	66 60	22 20	.....	.....	2,293	2,750 00	2,838 80
	.....	1,579 03	.....	1,579 03	4 74	1 58	.....	.....	95	250 00	256 32
00	$571,402 00	$22,809 03	$34,224 55	$830,435 58	$2,491 29	$830 43	$3,400 00	$34 00	3,341	$4,250 00	$7,605 72

COMMONWEALTH OF VIRGINIA,

Office of The Board of Public Works,

Richmond, July 20, 1900.

rty of Express, Steamboat and Steamship Companies, &c., by The Board of Public Works for the year 1900.

Test: *C. LEE MOORE, Secretary.*

Assessment for the year 1901 of the Property of Express Companies and Steamship and Steamboat Companies, which run Stea for the Transportation of Passengers or Freight, pursuant to Sections 21, 22 and 23 of the Act imposing Taxes, approved

Name of Company.	Location of Property.	Value of all express cars, steamships, steamboats or other float'g property, their machinery and equipment.	Value of all depots, wharves, sheds, offices, stores, docks, machine shops, granaries, elevators and other buildings.	Value of all real estate and personal property not included in the foregoing classification.	Value of all miscellaneous property.	Total value of all property.
Albemarle Steam Navigation Company	Franklin, Southampton county	$5,500 00	$.....	$.....	$100 00	$5,600
Chesapeake Steamship Company	Yorktown, York County	.....	500 00	.....	.....	500
	Gloucester Point, Gloucester county	.....	1,200 00	580 00	.....	1,780
		.....	1,700 00	580 00	.....	2 280
Baltimore Steam Packet Company	Norfolk city. Property in fee	.....	121,800 00	.....	.....	121,800
	" " Leased property, land	.....	30,000 00	.....	.....	30,000
	" " " b'l'dgs.	.....	16,400 00	.....	.....	16,400
	City Point, Prince George county	.....	2,000 00	.....	.....	2,000
		.....	170,200 00	.....	.....	170,20
Clyde Steamship Company	In the State	.....	.....	.....	1,500 00	1,500
Merchants' and Miners' Transportation Company	Norfolk city	7,500 00	150,000 00	.....	500 00	158,000
	" Leasehold property	.....	.....	8,200 00	.....	8,200
		7,500 00	150,000 00	8,200 00	500 00	166,200
Norfolk and Washington, D. C., Steamboat Company	Alexandria City	.....	.....	8,000 00	.....	8,000
Old Dominion Steamship Company	Norfok city	69,500 00	180,000 00	.....	.....	249 500
	Elizabeth City county, Hampton	40,000 00	.....	.....	.....	40,000
	Isle of Wight county, Smithfield	14,000 00	4,000 00	.....	.....	18,000
	Nansemond county, Suffolk	6 000 00	4,000 00	.....	.....	10,000
	Richmond city	.....	33,252 00	.....	.....	33,252
		129.500 00	221,252 00	.....	.....	350,752
Virginia Navigation Company	Richmond city	75,000 00	.....	.....	.....	75,000
Virginia Steam Navigation Company—Mattaponi River	King and Queen county	5,000 00	.....	.....	.....	5,000
Warwick Park Transportation Company	Henrico couuty	.....	.....	500 00	.....	500
Weems Steamboat Company of Baltimore City	Fredericksburg city	.....	.....	3,000 00	.....	3,000
	Caroline county	.....	.....	600 00	.....	600
	Westmoreland county	.....	.....	500 00	.....	500
	Richmond county	.....	.....	1,000 00	.....	1,000
	Essex county	.....	.....	1,000 00	.....	1,000
	Middlesex county	.....	.....	2,500 00	.....	2,500
	Lancaster county	.....	.....	500 00	.....	500
		.....	.....	9,100 00	.....	9,100
Adams Express Company	In the State	.....	.....	.....	14,127 13	14,127
Southern Express Company	In the State	.....	.....	3,900 00	19,680 00	23,580
United States Express Company	In the State	.....	.....	1,874 07	.....	1,874
	Total	$222,500 00	$543,152 00	$32,154 07	$35,907 13	$833,71

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This is to certify that the foregoing is a true copy of the assessment of the property of Express, Steamboat and Steamship

amship and Steamboat Companies, which run Steamships, Steamboats, Vessels, Barges, or other Floating Property, 21, 22 and 23 of the Act imposing Taxes, approved March 6, 1890, as amended.

	Value of all express cars, steamships, steamboats or other floating property, their machinery and equipment.	Value of all depots, wharves, sheds, offices, stores, docks, machine shops, granaries, elevators and other buildings.	Value of all real estate and personal property not included in the foregoing classification.	Value of all miscellaneous property.	Total value of all property.	Tax at 30c. on $100 valuation for support of the government.	Tax at 10c. on $100 valuation for support of public free schools	Net earnings in excess of $600.	Tax on net earnings in excess of $600 at one per cent.	Mileage operated by express companies in Virginia.	License tax of express companies.	TOTAL TAX.
..	$5,500 00	$.....	$.....	$100 00	$5,600 00	$16 80	$5 60	$.....	$.....	$	$.....	$22 40
..	.....	500 00	.....	.....	500 00	.....	.....	.....	.....	.....	.....	.....
	.....	1,200 00	580 00	.....	1,780 00	.....	.....	.....	.....	.....	.....	.....
	.....	1,700 00	580 00	.....	2 280 00	6 84	2 28	.....	.....	.....	.....	9 12
..	.....	121,800 00	.....	.....	121,800 00	.....	.....	.....	.....	.....	.....	.....
..	.....	30,000 00	.....	.....	30,000 00	.....	.....	.....	.....	.....	.....	.....
s.	.....	16,400 00	.....	.....	16,400 00	.....	.....	.....	.....	.....	.....	.....
..	.....	2,000 00	.....	.....	2,000 00	.....	.....	.....	.....	.....	.....	.....
	.....	170,200 00	.....	.....	170,200 00	510 60	170 20	.....	.....	.....	.....	680 80
..	.....	.....	.....	1,500 00	1,500 00	4 50	1 50	.....	.....	.....	.....	6 00
..	7,500 00	150,000 00	.....	500 00	158,000 00	.....	.....	.....	.....	.....	.....	.....
..	.....	.....	8,200 00	.....	8,200 00	.....	.....	.....	.....	.....	.....	.....
	7,500 00	150,000 00	8,200 00	500 00	166,200 00	498 60	166 20	.....	.....	.....	.....	664 80
	.....	.....	8,000 00	.....	8,000 00	24 00	8 00	4,984 92	49 85	.....	.....	81 85
..	69,500 00	180,000 00	.....	.....	249 500 00	.....	.....	.....	.....	.....	.....	.....
..	40,000 00	.....	.....	.....	40,000 00	.....	.....	.....	.....	.....	.....	.....
..	14,000 00	4,000 00	.....	.....	18,000 00	.....	.....	.....	.....	.....	.....	.....
..	6 000 00	4,000 00	.....	.....	10,000 00	.....	.....	.....	.....	.....	.....	.....
..	.....	33,252 00	.....	.....	33,252 00	.....	.....	.....	.....	.....	.....	.....
	129.500 00	221,252 00	.....	.....	350,752 00	1,052 25	350 75	.....	.....	.....	.....	1,403 00
..	75,000 00	.....	.....	.....	75,000 00	225 00	75 00	1,397 89	13 98	.....	.....	313 98
..	5,000 00	.....	.....	.....	5,000 00	15 00	5 00	395 33	3 95	.....	.....	23 95
..	.....	.....	500 00	.....	500 00	1 50	50	.....	.....	.....	.....	2 00
..	.....	.....	3,000 00	.....	3,000 00	.....	.....	.....	.....	.....	.....	.....
..	.....	.....	600 00	.....	600 00	.....	.....	.....	.....	.....	.....	.....
..	.....	.....	500 00	.....	500 00	.....	.....	.....	.....	.....	.....	.....
..	.....	.....	1,000 00	.....	1,000 00	.....	.....	.....	.....	.....	.....	.....
..	.....	.....	1,000 00	.....	1,000 00	.....	.....	.....	.....	.....	.....	.....
..	.....	.....	2,500 00	.....	2 500 00	.....	.....	.....	.....	.....	.....	.....
..	.....	.....	500 00	.....	500 00	.....	.....	.....	.....	.....	.....	.....
	.....	.....	9,100 00	.....	9,100 00	27 30	9 10	.....	.....	.....	.....	36 40
..	.....	.....	.....	14,127 13	14,127 13	42 39	14 13	.....	.....	959	1,250 00	1,306 52
..	.....	.....	3,900 00	19,680 00	23,580 00	70 74	23 58	.....	.....	2,431	2,750 00	2,844 32
..	.....	.....	1,874 07	.....	1,874 07	5 61	1 87	.....	.....	95	250 00	257 48
..	$222,500 00	$543,152 00	$32,154 07	$35,907 13	$833,713 20	$2,501 13	$833 71	$6,788 14	$67 78	3,485	$4,250 00	$7,652 62

COMMONWEALTH OF VIRGINIA,

Office of The Board of Public Works,

Richmona, July 16, 1901.

the property of Express, Steamboat and Steamship Companies, &c., by The Board of Public Works for the year 1901.

Test: *C. LEE MOORE, Secretary.*

Reports to be Made to the Auditor of Public Accounts

By Express, Steamship and Steamboat Companies, who may run Steamships, Steamboats, Vessels, or Barges, or other floating property, for the Transportation of Passengers or Freight.

Report for the year ending February 1, 1900.

Name of Company The Weems Steamboat Company of Baltimore City.
Name of President or other chief Officer Henry Williams. His Post office address Baltimore, Md.

In What County or Coporation Property is Located.	Value of all Express Cars, Steamships, Steamboats or other floating property, their Machinery and Equipment.	Value of all Depots, Wharves, Sheds, Offices, Stores, Docks, Machine Shops, Granaries, Elevators and other Buildings.	Value of all Real Estate and Personal Property not included in the Foregoing Classification.	Value of all Miscellaneous Property.	Total value of all Property.	Mileage in Virginia. (To be reported only by Express Companies, &c.)	Remarks.
City of Fredericksburg, Va			3,000 00		3,000 00		
Caroline County "			600 00		600 00		
Westmoreland do "			500 00		500 00		
Richmond do "			1,000 00		1,000 00		
Essex do "			1,000 00		1,000 00		
Middlesex do "			2,500 00		2,500 00		
Lancaster do "			500 00		500 00		
Total,			9,100 00		9,100 00		

Report of gross and net receipts for the year ending February 1, 1900, made in pursuance of the act imposing taxes, &c.

Express Companies not required to report these items.

Gross earnings, $26,764 38

Net earnings, ———

Amount of net earnings after deducting $600, $———

Virginia, to-wit:

This day of the Company, personally appeared before me, in my aforesaid, and made oath that the foregoing report is correct. Given under my hand, this the day of 190 .

Notary Public.

REPORTS TO BE MADE TO THE AUDITOR OF PUBLIC ACCOUNTS

By Express, Steamship and Steamboat Companies, who may run Steamships, Steamboats, Vessels, or Barges, or other floating property, for the Transportation of Passengers or Freight.

Report for the year ending February 1, 1902.

Name of Company The Weems Steamboat Company of Baltimore City.
Name of President or other chief Officer Henry Williams. His Post office address Baltimore, Md.

IN WHAT COUNTY OR CORPORATION PROPERTY IS LOCATED.	Value of all Express Cars, Steamships, Steamboats or other floating property, their Machinery and Equipments.	Value of all Depots, Wharves, Sheds, Offices, Stores, Docks, Machine Shops, Granaries, Elevators and other Buildings.	Value of all Real Estate and Personal Property not included in the Foregoing Classification.	Value of all Miscellaneous Property.	Total value of all Property.	Mileage in Virginia. (To be reported only by Express Companies, &c.)	REMARKS.
City of Fredericksburg			$3,000 00				
Caroline County			600 00				
Westmoreland do			500 00				
Richmond do			2,000 00				
Essex do			1,000 00				
Middlesex do			2,500 00				
Lancaster do			500 00				
Total,							

Report of gross and net receipts for the year ending February 1, 190 , made in pursuance of the act imposing taxes, &c.

Express Companies not required to report these items.

Gross earnings, $34,934 91

Net earnings, ———

Amount of net earnings after deducting $600, $———

VIRGINIA, to-wit:

This day of the Company, personally appeared before me, in my aforesaid, and made oath that the foregoing report is correct. Given under my hand, this the day of 190 .

Notary Public.

118 & 119 NOTE BY CLERK.—Exhibit "Plat of Lot on River at Tappahannock, sold by Wynn and wife to Weems Steamboat Company," filed with plaintiff's affidavits, April 30th, 1903, extracted from court papers and filed by plaintiff as "Exhibit No. 24" with depositions taken in its behalf before Special Master Ernest M. Long.

JOSEPH P. BRADY, *Clerk.*

Plaintiff's Exhibit Filed with Affidavits.

Deed from Claus L. Clausen and Wife to Georgeanna Williams, Wife of Henry Williams, and Matilda S. Forbes, Wife of Sydney H. Forbes.

Filed April 30th, 1903.

This deed made the 28th day of April, A. D., 1876, between Claus L. Clausen and Bergetha Clausen, his wife, of the County of Richmond, and State of Virginia, of the first part, and Georgeanna Williams, wife of Henry Williams, and Matilda S. Forbes, wife of Sydney H. Forbes, of the City of Baltimore, in the State of Maryland, of the second part, Witnesseth: That said parties of the first part in and for the consideration of one thousand dollars to them paid, the receipt whereof is hereby acknowledged, do grant and convey and generally warrant unto the said Georgeanna Williams and Matilda S. Forbes, their heirs and assigns forever, the following property to-wit: The wharf on the Rappahannock river in front of the farm Milden or Milton Hall in Richmond County, Virginia, known as Milton wharf, with the warehouse, track and car thereon, and also the ground at the land end of the wharf described as follows: Beginning at low water mark on the west or upper side of the wharf two feet east of Winslow & Co.'s Canning House, thence along Northeasterly between the wharf and said Canning House to a stake two feet East of the South East corner of said Canning House, thence North 89 feet to a stake in line with the west side of Main street and also in line with the river front of the Verandah before Sharp's store, thence South East to East 56 feet to a stake 4 feet west of said Verandah before Sharp's store, thence in a straight line to low-water mark of the river four feet East of the wharf, this line passing through Sharp's boat-house, thence up the river to the place of beginning. *Provided, however,* that D. W. C. Sharp's right under a lease from William Sharp and L. D. Roane to free use of the wharf for his own merchandise shall be respected. The said parties of
120 the first part also grant free road over the Milton Hall property, where it is now located, for the public, to and from the Milton wharf, so long as the wharf is kept up in the same place.

Witness the hands and seals of the said parties of the first part the day and year above written.

BERGETHA CLAUSEN. [L. S.]
C. L. CLAUSEN. [L. S.]

STATE OF VIRGINIA,
County of Richmond, ss:

I, Thomas Oldham, a commissioner in chancery for the County and State aforesaid, do certify that Claus L. Clausen whose name is signed to the above writing, bearing date the 28th of April, 1876, personally appeared before me in my county aforesaid and acknowledged the writing to be his act.

Given under my hand this 28 day of April, A. D., 1876.

TH. OLDHAM, *Comm'r.*

STATE OF VIRGINIA,
County of Richmond, ss:

I, Thomas Oldham, a commissioner in chancery for the County and State aforesaid, do certify that Bergetha Clausen, the wife of C. L. Clausen, whose names are signed to the above deed, bearing date April 28th, 1876, personally appeared before me, and being examined by me privily and apart from her said husband, and having the writing aforesaid fully explained to her, she, the said Bergetha Clausen, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand this 28th day of April, A. D., 1876.

TH. OLDHAM, *Comm'r.*

Clerk's Office, County Court of Richmond County, in the State of Virginia, May 30th, 1876.

This deed of bargain and sale bearing date on the 28th day of April, 1876, was this day presented in the office aforesaid and thereupon admitted to record with the certificates annexed.

Teste:

L. D. WARNER, *Clerk.*

Record- & Examined.
Deed Book No. 32, page 162.

121 PLAINTIFF'S EXHIBIT.

Agreement Between Henry Williams, Agent, &c., of the Weems Steamboat Company and John H. Whealton, Filed with Plaintiff's Affidavits.

Filed April 30th, 1903.

Article of agreement, made this 13 day of April, A. D., 1892, between Henry Williams, Agt., &c., of the Weems Steamboat Company of Baltimore, Md., of the first part and John H. Whealton of the County of Lancaster, State of Va., of the second part, as follows, to-wit:

The party of the first part agrees to furnish, free of interest, one-half cost of building pier head, said cost not to exceed six hundred

dollars, to allow John H. Whealton ten per cent. to be credited on the amount advanced by the party of the first part until it is paid in full. The party of the second part agrees to build a substantial pier head at place agreed upon, to furnish right of way to same from the public roads, to furnish a safe and reliable man to receive and deliver freights, &c.

It is further agreed that the Weems line of steamers shall have exclusive right to stop at said wharf or pier, except that sail boats can stop there, provided they do not, in any way, interfere with the stopping of the steamers.

THE WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY,
By HENRY WILLIAMS, *President.* [SEAL.]
JOHN H. WHEALTON. [SEAL.]

Witness:
T. S. CURLETT.

122 PLAINTIFF'S EXHIBIT.

Deed from Thomas H. Massey to Jacob Tome, Mason L. Weems, Theodore Weems and Others, Filed with Plaintiff's Affidavits.

Filed April 30th, 1903.

This deed made this twentieth day of December, in the year one thousand eight hundred and sixty-nine, between Thomas H. Massey of the County of Westmoreland in the State of Virginia of the first part and Jacob Tome, Robert A. Taylor, Joseph Jas. Taylor, John L. Gittings, Mason L. Weems and Theodore Weems of the City of Baltimore and of the State of Maryland of the second part: Witnesseth, that for and in consideration of the sum of one thousand and fifty dollars by the parties of the second part to him the said Thomas H. Massey party of the first in hand paid, the receipt whereof is hereby acknowledged, the said Thomas H. Massey doth grant unto the said Jacob Tome, Robert A. Taylor, Joseph Jas. Taylor and John L. Gittings as to one undivided moiety thereof, and to said Mason L. Weems and Theodore Weems as to the other undivided moiety, their heirs and assigns in fee simple—parties hereto of the second part, with general and special warranty, all that part of his lot in Leedstown Westmoreland County Va. bounded and described as follows, to-wit: on the east by a lot belonging to John Spilman now occupied by Messrs. T. M. & R. B. Spilman, on the South by the Rappahannock river, on the west by Henry Taylor Esq.'s land, and on the north by the main county road running through Leedstown, it being the lower portion of the lot owned by S. o. Massey at Leedstown containing ½ an acre more or less, together with all the appurtenances thereunto belonging including the wharf, three warehouses and a black smith shop. The said Massey covenants that he has the right to convey the said land to the grantee: That he has done no act to encumber the said land; that the grantee shall have quiet possession of the said land free

from all encumbrances; and that he the party of the first part will execute such further assurances of the said land as may be requisite. As witness the following signature and seal, the day and year first above written.

T. H. MASSEY. [SEAL.]

($1.50 Internal Revenue Stamp.)

123 STATE OF MARYLAND,
City of Baltimore, To-wit:

I, William W. Latimer, a commissioner for the State of Virginia, aforesaid, in the State of Maryland, do certify that Thomas H. Massey, whose name is signed to the writing above bearing date on the twentieth day of December, 1869, has acknowledged the same before me in my City of Baltimore aforesaid. Given under my hand this twenty-fourth day of December, A. D., 1869.

[Seal of said Commissioner.]

W. W. LATIMER,
A Commissioner for Va., Residing in Baltimore City, Md.

VIRGINIA:

Clerk's Office of Westmoreland County Court, Dec'r 27th, 1869.

The foregoing deed of bargain and sale from Thomas H. Massey to Jacob Tome & *als.* conveying real estate was this day received in the Clerk's Office of said Court & with certificate of acknowledgement thereon endorsed admitted to record.

Teste:

J. H. SISSON, *D. C.*

Recorded and examined.

Teste:

J. HENRY SISSON, *D. C.*

Affidavit of W. J. Phillips on Behalf of Plaintiff.

Filed April 30th, 1903.

STATE OF MARYLAND,
City of Baltimore, To-wit:

I, T. Bayard Williams, a Notary Public of the State of Maryland in and for the City of Baltimore, do hereby certify that on the 29th day of April, 1903, personally appeared before me, W. J. Phillips, and made oath in due form of law that he had personal knowledge of the following facts, and that the said facts as herein stated are true:

124 That he is a traveling salesman for Clark & Jones of Baltimore City, and that heretofore, in February, 1903, when he was a passenger on the Steamer "Essex" of the Weems Steamboat Line, he saw the Steamer "Essex" approach Monaskon wharf, with

a view to landing her freight, and the United States mail carried by her; that the Steamer "Tourist" of the People's Steamboat Company was lying at the wharf, and prevented the said Steamer "Essex" from landing at said wharf.

W. J. PHILLIPS.

Sworn to and subscribed before me, the aforesaid notary, in the City of Baltimore, State of Maryland, this twenty-ninth day of April, 1903.

Witness my hand and notarial seal.

[NOTARIAL SEAL.]

T. BAYARD WILLIAMS,
Notary Public.

Affidavit of William D. Scott on Behalf of Plaintiff.

Filed April 30th, 1903.

STATE OF VIRGINIA,
Corporation of Fredericksburg, To-wit:

I, J. A. Taylor, a notary public of the State of Virginia, in and for the Corporation aforesaid, do hereby certify that on this 29th day of April, 1903, personally appeared before me William D. Scott and made oath in due form of law that he had personal knowledge of the following facts and that the said facts as herein stated are true.

That he is the agent of The Weems Steamboat Company of Baltimore City at Fredericksburg, Va., and keeps the books of said company showing the receipts for freight from Fredericksburg to the wharves on the Rappahannock river, and that said receipts for freight for the month of April, 1902, were $554.81 and that said receipts for freight for the month of April, 1903, amounted to $208.14 and that said decrease in receipts is in the affiant's belief due solely to the operation of the Steamer Tourist by the People's Steamboat Co. on the Rappahannock river and to no other cause, and that in addition to losses sustained by the Weems Steamboat Company in freight receipts from Fredericksburg the losses sus-
125 tained by said company by reason of the diversion of passenger travel from the steamers of said Weems Steamboat Co. to the Steamer Tourist have been very large and that the total losses sustained by said Weems Steamboat Company by reason of the operation of said Steamer Tourist and her stopping at the wharves owned or controlled by the said Weems Steamboat Company for freight and passengers amount to at least $2,500 at the lowest figure by reason of the diversion of business.

WM. D. SCOTT.

Sworn to and subscribed before me the aforesaid notary in the Corporation of Fredericksburg in the State of Virginia this 29th day of April, 1903.

Witness my hand and notarial seal.

[NOTARIAL SEAL.]

J. A. TAYLOR,
Notary Public.

Certificate of Clerk of Middlesex County Court as to Qualification of H. C. Farinholt, Justice of Peace.

Filed May 2nd, 1903.

VIRGINIA,
County of Middlesex:

I, F. M. Eastman, Clerk of the County Court of the County aforesaid, in State of Virginia, do hereby certify that H. C. Farinholt is an acting justice of the peace in and for said county duly elected and qualified and his acts are entitled to credit. His term of office began July 1st, 1901, and ends June 30th, 1903.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Saluda, this 28th day of April, 1903, and in the 127 year of the Commonwealth.

[Seal of Court.]

F. M. EASTMAN, *Clerk.*

126 *Memorandum of Court Refusing Temporary Injunction and for Reference of Cause to Special Master.*

Filed May 16th, 1903.

In Equity.

THE WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY
versus
THE PEOPLE'S STEAMBOAT COMPANY ET ALS.

WADDILL, *District Judge:*

This cause is now before the court upon an application for a temporary injunction, made on behalf of the complainant against the defendants, to enjoin the People's Steamboat Company, which operates a competing line of steamboats to that of complainants, from allowing its steamer, the "Tourist," to use certain wharves, thirteen in number, on the Rappahannock river, owned or leased by the complainant company; because, as alleged, said wharves are not public wharves, but the private property of the complainants. Upon the presentation of the bill, a rule was awarded, requiring the defendants to show cause why the injunction should not issue, and upon its return affidavits in favor of and against the motion were filed by the respective parties, and the cause was then argued and submitted.

The question at issue turns upon the ownership by the complainant of said wharves, and whether, or not, they are in point of fact public or private wharves, and what riparian rights in connection with the wharves, if any, are owned by the complainant. These questions are so largely in a state of doubt, in many of their essential features, in the view taken by the court, it would be improper, upon an application for a temporary injunction, and in advance of

hearing the case upon its merits, to undertake to pass upon them, and grant the injunction, as prayed for.

Whether or not an interlocutory injunction should be awarded, is a matter addressed to the sound discretion of the court. In its exercise, all of the circumstances of the case should be taken into consideration, not only the damages that may arise to the complainant by reason of the refusal of the injunction, but the damages likely to result to the defendant- from its issuance. If there is a greater likelihood of danger from the latter than from the former, the in-
127 junction should, as a rule, be refused. And this is particularly true of doubtful causes, and where the insolvency of the defendant is not established.

Foster's Fed. Prac. Sec. 233, and cases cited.
Ryan *vs.* Williams, 100 F. R., 172.

In the present case, many doubtful questions of law and fact are involved, some of which affect the rights of the public, as well as those of the parties to the litigation; and it does not appear that the probability of irreparable damage to the complainant, by the refusal to grant the interlocutory order, is as great as will likely result to the defendants from awarding the same.

No opinion is intended to be expressed herein upon any questions of law or fact properly determinable at the hearing upon the merits. The rights of parties ultimately are in no way affected by either granting or refusing an injunction.

New Memphis Gas & Light Co. *vs.* Memphis, 72 F. R., 953.
Buskirk *vs.* King, 25 U. S. App. 605.

The injunction, as prayed for at this time, will be denied, and the cause referred to a special master, to enquire and report upon the questions of law and fact involved, in reference to the ownership of the wharves in question, what riparian rights are possessed by complainant; and whether said wharves are public or private wharves.

128 *Replication of Complainant to Answers of Defendants.*

Filed June 2nd, 1903.

In Equity.

THE WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, a Body Corporate,

versus

PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, President; A. W. EMBREY, Vice-President; A. RANDOLPH HOWARD, Treasurer; WILLIAM D. CARTER, —— CRADDOCK, F. V. ARCHER.

To the Honorable the Judges of the Circuit Court of the United States in and for the Eastern District of Virginia:

This repliant, the Weems Steamboat Company of Baltimore City, a body corporate, saving and reserving to itself all and all manner

of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants, for replication thereunto, saith, that it doth, and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are very uncertain, evasive, and insufficient in law, to be replied unto by this repliant; without that, that any other matter or thing in said answers contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

ST. GEO. R. FITZHUGH,
Solicitor for Plaintiff.

129 *Order of Reference.*

Entered and Filed June 16th, 1903.

In Equity.

THE WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY
against
THE PEOPLE'S STEAMBOAT COMPANY AND OTHERS.

This cause came on this day to be again heard, upon the papers formerly read herein, and upon the rule heretofore awarded to show cause why an injunction should not be granted as prayed for in complainant's bill, and upon the affidavits filed by the complainant and defendants, respectively, on said motion, and was argued by counsel. On consideration whereof, the court, without at this time passing upon any other question doth order that Ernest M. Long, Esquire, who is hereby appointed special master for the purpose, do take such evidence as may be submitted to him by either party, or as he may find necessary to take bearing upon the title to the several wharves mentioned in the complainant's bill, and claimed by complainant; what riparian rights passed to the complainant with the acquisition of said wharves, and whether or not the said wharves are public or private wharves, showing the character of each. And the said special master will make report of said several matters, and return with the same the evidence taken by him, at the earliest possible moment.

EDMUND WADDILL, JR.,
United States Judge.

Richmond, Va., 16th June, 1903.

130 *Report of Ernest M. Long, Special Master.*

Filed October 26, 1903.

In the Circuit Court of the United States for the Eastern District of Virginia, at Richmond. In Equity.

WEEMS STEAMBOAT COMPANY OF BALTIMORE, MD.,
vs.
PEOPLE'S STEAMBOAT COMPANY AND OTHERS.

To the Honorable Edmund Waddill, Jr., Judge of the said Court:

Pursuant to Decree of Reference made and entered in this cause on the 16th day of June, 1903, whereby the said cause was referred to the undersigned, appointed Special Master therein to take such evidence as might be submitted to him by either party, or as he might find necessary to take, bearing upon the title to the several wharves mentioned in the Complainant's Bill and claimed by complainant; what riparian rights passed to the complainant with the acquisition of said wharves, and whether or not the said wharves are public or private wharves, showing the character of each, the undersigned Special Master after giving notice to counsel representing the parties therein, which said notice was duly accepted by the said counsel, and is herewith returned, proceeded on the 4th, 5th and 6th days of August, 1903, to take evidence bearing upon the said questions, which said evidence is herewith returned in the form of depositions, marked "Depositions No. 1" together with such documentary evidence as was submitted at the same time and place by the said parties.

And by consent of counsel representing said parties herein, without formal notice, further evidence was taken in the said cause in the said city of Fredericksburg, Va., on the 26th and 27th of August, 1903, which, together with such documentary evidence as was then and there submitted by the said parties, is herewith returned marked "Depositions No. 2."

Upon careful consideration of the said evidence and examination of the said documentary proofs, the Special Master finds that further evidence regarding the wharf property at Tappahannock and Bayport will necessarily have to be taken, and therefore his report as to the said two wharves will be hereafter returned in a supplementary report, the Special Master being able now to report upon all
131 the other wharf properties, except the two above mentioned, deems it advisable not to delay the proceedings on that account.

The Special Master herewith reports his findings of facts as to all of the wharves involved in this controversy, except Tappahannock and Bayport wharf properties, to-wit:

1. *Findings of Facts as to Carter's Wharf.*

That by successive conveyances, the first of which bearing date on June 1, 1875, the title to the said wharf property is now vested in the heirs of M. A. Carter, in all of which said conveyances the property is specifically mentioned and conveyed as wharf property (Plaintiff's Exhibits Nos. 68, 69, 70, 71, 72 and 73).

That by a writing under seal dated the 22nd day of January, 1903 (Plaintiff's Exhibit No. 19), the said wharf property was leased to the complainant herein for a period of one year from the date thereof; that the said complainant is in possession thereof as lessee (Depositions No. 1, pages 125, 130); that in consideration of the said lease the owner of said wharf property is to receive ten per cent. commissions from the said complainant upon the total receipts of passenger fares and freight charges collected for the use of said wharf, and that an agent is employed at the said wharf (Depositions No. 1, p. 64).

That there is a road traveled by the public leading to the said wharf (Depositions No. 1, p. 65); but that it appears from defendants' exhibit "Y" that a wharf existed at this point prior to the establishment of the road thereto. It also appears from the said exhibit "Y" that a landing was established at or near this point, but in so much as the then owner of the wharf property, M. A. Carter, received only $14.12 of the amount appropriated by the court for the establishment of the said road and landing, the Special Master concludes that the said wharf property was not, and was not intended to be, condemned for the purposes of a public wharf, nor is there any evidence to show an acceptance on behalf of the county authorities of the said wharf as public property.

That the character of the shipments made and received over the said wharf consists of general merchandise and the products of the country, and that merchants and the inhabitants living in the neighborhood and for some distance in the interior of the county make use of the said wharf as their usual shipping point (Depositions No. 1, p. 66); and that the said wharf, or at least a part thereof, is in the navigable waters of the Rappahannock River;

132 That there is a post office at the said wharf, and that the mail to and from said point is carried over the said wharf (Depositions No. 1, p. 67); and that compensation as wharfage from the defendant was sent to and received by the owners of the said wharf, subsequent to the lease thereof by the complainant (Depositions No. 2, p. 69).

2. *Findings of Facts as to Naylor's Wharf Property.*

That by successive conveyances, the first of which bearing date on the 11th day of December, 1865, the title to the said wharf property is now vested in T. D. Marks; that by a writing under seal, bearing date on the 31st day of January, 1903, the said wharf property was leased to the complainant herein for a period of one year

from the date thereof (Plaintiff's Exhibit No. 9); that the said complainant is in the possession thereof by use and occupation (Depositions No. 1, p. 121); that an agent is employed at said wharf; that in consideration of the said lease the owner of said wharf property is to receive ten per cent. commissions from the said complainant upon the total receipts of passenger fares and freight charges collected for the use of said wharf; that the character of merchandise shipped and received over the said wharf consists of the general products of the country, and that the said wharf is the regular shipping point for persons living in the neighborhood thereof and the inhabitants of the county for some distance in the interior (Depositions No. 1, p. 45);

That there is a post office at this point, and that the mail received thereat and sent therefrom is carried over the said wharf to and from the steamers of the complainant (Depositions No. 1, p. 46); that the pier-head of the said wharf is in the navigable waters of the Rappahannock River (Depositions No. 1, pp. 44, 47); that there is no obstruction preventing access to the said wharf, and that the shore end of the said wharf is used by the public at their convenience in going to, shipping and receiving freight to and from the said wharf;

That repairs upon the said wharf are made by the owner thereof at his own expense; that the said wharf property is assessed for taxation and the taxes paid by the said owner (Depositions No. 1, p. 50).

That by permission of the owner sail vessels occasionally land at the said wharf, and that the wharfage collected and received from the said vessels does not exceed on the average $25.00 per year (Depositions No. 1, p. 49);

That the present wharf structure was built by the present owner in 1894; that a wharf existed at this point prior thereto
133 (Depositions No. 1, p. 49); that it appears from the Defendants' Exhibit "O" that by an order of the County Court of Richmond County (in which said county the said wharf is situated), dated the 14th day of June, 1887, that a public road was opened from a bridge at the mouth of Cat Point Creek to Naylor's Wharf from which said exhibit it appears to the Special Master that a wharf existed prior to the establishment of the said road. A map of said wharf is filed by the complainant, and marked "Plaintiff's Exhibit No. 10."

3. *Finding of Facts as to Ware's Wharf.*

That the said wharf property is situated in Essex County, Va., and that R. L. Ware is the fee simple owner thereof (Depositions No. 1, pp. 70, 72; Plaintiff's Exhibit No. 67).

That by a writing under seal, dated the 21st day of January, 1903, the said owner leased to the said complainant for a period of one year from the date thereof the said wharf property, and that in consideration of the said lease the owner was to receive from the said complainant ten per cent. commissions upon all freight charges

and passenger fares collected by the said complainant at the said wharf (Plaintiff's Exhibit No. 14; Depositions No. 1, p. 79); that the owner of said wharf maintains an agent at the said wharf (Depositions No. 1, p. 70), and that the duties of the said agent are to assist in the mooring of the vessels of the complainant landing at the said wharf, and in receiving and forwarding freight over said wharf (Depositions No. 1, p. 80);

That the said wharf was built sometime in the year 1873 by the present owned thereof; that the vessels of the defendant landing at said wharf do so without the consent of the present owner (Depositions No. 1, p. 71); that sail vessels occasionally land at said wharf by special permission of the owner thereof upon paying wharfage for the privilege; that *that* the character of the merchandise received over and shipped from the said wharf consists of the general products of the country, and that the said wharf is the regular or usual shipping point of the people living in the neighborhood, and of the inhabitants of the country for some distance in the interior (Depositions No. 1, p. 75); that there are no obstructions preventing access to the said wharf, and that the shore end thereof is in use by the public in going to, shipping and receiving frieght from and over the said wharf (Depositions No. 1, p. 74); that no wharfage has been received from the said defendant-, and no such wharfage has been tendered (Depositions No. 1, page 79); that fishermen
134 are in the habit of using the said wharf for the purpose of buying, selling and shipping fish; that the pier-head of the said wharf is in the navigable waters of the Rappahannock River.

That there is a post office at this point and that mail is sent to and received from the vessels of the complainant over said wharf (Depositions No. 1, p. 77); that the average revenue received by the owner of said wharf from all sources is about $500 annually, and that no vessels have ever landed at said wharf without the consent of the owner thereof except those of the defendant (Depositions No. 1, p. 85); that it appears from Defendants' Exhibit "S" filed herein, that by an order of the Essex County Court dated 23rd of July, 1874, a public road was established to the said wharf. The Special Master finds from the evidence that the said wharf was erected prior to the opening of the said road.

4. *Findings of Facts as to Bowler's Wharf.*

That the fee simple title to the said wharf property is vested in the heirs of R. M. Neale, deceased (Plaintiff's Exhibits Nos. 43, 44, 45 and 46); that by a writing under seal bearing date on the 21st day of January, 1903, the said property has been leased to the complainant herein for a period of one year from the date thereof; that the said complainant is in possession by use and occupation of the said wharf (Depositions No. 1, p. 120), and that prior to the execution of the said written lease the said wharf property under a verbal agreement had been controlled by the said complainant (Depositions No. 1, p. 22); that sail vessels occasionally land at said wharf by special permission of the owner thereof (Depositions No. 1, p. 22),

and that the steamers of the said defendant also land there, and that the owner has received compensation by way of wharfage from the said defendant (Depositions No. 1, p. 29);

That repairs upon the said wharf are made at the expense of the said owner; that the said property is assessed for taxation, and the taxes paid by the said owner;

That the character of freight received at and shipped over the said wharf consists of the general products of the country, and that the said wharf is the usual or regular shipping point, and point of departure for passengers or persons living in the neighborhood, and for some distance in the interior (Depositions No. 1, pp. 23, 24, 25);

That there is a post office at this point, and that mail is sent to and received from the steamers of the said complainant, over the
135 said wharf. (Depositions No. 1, p. 25); that an agent is employed at the said wharf (Depositions No. 1, p. 28), that there are oyster houses attached to or upon the pierhead of the said wharf, and that the said pier-head is in the navigable waters of the Rappahannock River (Depositions No. 1, p. 27); that there are no obstructions on the said wharf, or at the shore end thereof, preventing access thereto, and that the shore and thereof is used by the public in going to, receiving and shipping freight therefrom (Depositions 2, p. 10); that it appears from plaintiff's Exhibit No. 45 that the records of the Essex County Court show that upon application of the petitioners an order was entered on the 16th of February, 1874, granting them permission to erect a wharf at or on the county landing at Bowler's. It further appears from Defendant's Exhibit "C" that as early as the 17th of March, 1862, a road existed leading to Bowler's and from Defendant's Exhibit "B" it appears that on the 19th day of September, 1882, a public landing was established at Bowler's. From the above documentary evidence the Special Master concludes that in so much as a wharf had been established at Bowler's as early as the year 1874, that the public landing established at the same point in the year 1882 must have been either above or below the said wharf, and that, therefore, the said wharf property is private property of the aforesaid owners.

5. *Findings of Fact as to Monaskon.*

That by successive conveyances, the first of which is dated the 14th day of July, 1871, the fee simple title to this property is vested in Mrs. Minnie L. Richardson, daughter of B. L. Farinholt, and that in all of the title deeds filed as exhibits by the complainant the said property is specifically mentioned as being wharf property at, or known as Monaskon, (Plaintiff's Exhibits Nos. 56, 57, 58, 59, 60, 61, and 62); that by a writing under seal, dated the first day of January, 1903, said wharf property was leased to the said complainant for a period of one year from the date thereof (Plaintiff's Exhibit "K" with bill, and No. 2 with Depositions), in consideration of which said lease the said owner was to receive a ten per cent. commission upon all freight charges and passenger fares received at the said wharf by the said complainant (Depositions No. 1, p. 14), and that by use and

occupation the said complainant is in possession of the wharf property as lessee thereof (Depositions No. 1, pp. 125-130); that a wharf existed at this point certainly prior to July, 1871, and that since that time the wharf structure has been rebuilt twice (Depositions
136 No. 1, p. 7), that a part of the said wharf structure extends out into the river beyond low-water mark, and is to that extent in the navigable waters of the Rappahannock River (Depositions No. 1, p. 12); that there are no fences or other obstructions at the shore end of the said wharf property preventing access thereto, and that patrons of the wharf are accustomed to make use of an open space at the shore end thereof, in going to, receiving and delivering freight to and from the said wharf (Depositions No. 1, p. 14); that said wharf is the shipping point for a large number of persons living in the neighborhood and for some distance back into the surrounding country, and that the character of the freight received at and shipped from the said wharf consists of general merchandise and the general products of the country (Depositions No. 1, p. 13.

That there is a post office at this point, and that mail is carried to and from the same over the said wharf, (Depositions No. 1, p. 13); that there is a Warehouse for the storage of freight, &c. on the pier-head of the said wharf; that occasionally other vessels, by special permission of the owner of the wharf, have been permitted to moor thereat, and that the vessels of the complainant are the only ones that do so regularly, (Depositions No. 1, p. 15); that there is an agent at this wharf whose duty it is to assist in mooring the boats of complainant, receive, care for and deliver the freight, and attend to the repairs of the said wharf (Depositions No. 1, p. 19); that the defendant's vessels land at the said wharf without the permission of the owners thereof, and that the said defendant's vessels have tendered wharfage for such use to said owners, and that such compensation was returned (Depositions No. 1, p. 12; Depositions No. 2, p. 1 and p. 74); and that by an Act of the General Assembly of Virginia passed the 24th day of February, 1900 (Acts 1899-1900) the Legislature of Virginia granted to B. L. Farinholt the right to "extend and increase the area of the pier-head at his wharf at Monaskon."

6. *Finding of Fact as to Whealton's Wharf Property.*

That, by successive conveyance, the first of which being dated December 19, 1899, the fee simple title to the said wharf property is vested in the Whealton Packing Company, Incorporated (Plaintiff's Exhibits Nos. 47, 48, 49, 50, 51); and that by a writing under seal dated the 23rd day of January, 1903, the said property was leased to the said complainant for a period of one year from the date thereof (Plaintiff's Exhibit No. 7); that in consideration of the said
137 lease the said owners receive ten per cent. commission upon the business done by the complain-t at the said wharf (Depositions No. 1, p. 40); that repairs are made upon the said wharf at the expense of the owners thereof; that the said property is assessed for taxation, and the taxes thereon paid by the said owners (Depositions No. 1, p. 34); that the said wharf was built sometime after

the year 1891; that a special act of the legislature was passed granting the right to build said wharf (Act of Assembly (Va.) 1891-'92, p. 873); that there are no obstructions on the said wharf or at the shore end thereof preventing access to the same (Depositions No. 1, p. 37); that the public are accustomed to make use of the said shore end of the wharf and of the said wharf property in going to and landing from vessels moored thereat (Depositions No. 1, p. 37); and that there are structures on the pier-head of the said wharf (Depositions No. 1, p. 37); that the said pier-head is in the navigable waters of the Rappahannock River (Depositions No. 1, p. 37) and that persons living in the neighborhood, and for some distance back in the interior are accustomed to make use of the said wharf in going to, shipping and receiving freight therefrom, (Depositions No. 1, p. 38); that the general character of the freight shipped over and received from the said wharf consists of general merchandise and the general products of the country; that sail vessels occasionally land at the said wharf by permission of the owners thereof, but no wharfage is collected from them (Depositions No. 1, p. 40); that wharfage has been received by the owners thereof since the said lease, from the defendants (Depositions No. 1, p. 33; Depositions No. 2, p. 67); that no road ran to or terminated at the wharf site prior to its erection (Depositions No. 1, p. 40), and that the road that now leads to the said wharf was established since the erection thereof, (Depositions No. 1, p. 36; Defendant's Exhibit "R."

7. *Findings of Fact as to Water View Property.*

That by successive conveyances, the first of which bearing date May 1, 1857, the fee simple title to this property is now vested in A. B. Evans (Plaintiff's Exhibits Nos. 93, 94) that by a writing under seal dated the 31st day of January, 1901, the said property has been leased to the complainant herein, (Plaintiff's Exhibit No. 18); that the said complainant is in possession of the said property by use and occupation (Depositions No. 1, pp. 125, 178); that since the erection of the said wharf as further appears from said
138 Exhibit No. 18 and from the testimony of the said A. B. Evans (Depositions No. 1, p. 178) the said complainant has possessed the privilege of landing its vessels at said wharf; that the consideration of the said lease is the payment to the said owner of ten per cent. commission on all business done at the said wharf by said complainant, and free transportation for himself and family; that the said wharf was erected in the year 1880 as a source of revenue (Depositions No. 1, p. 179): that the cost of erection, amounting to the sum of $2,000 (Depositions No. 1, p. 196), and that the revenue derived by the owner from said wharf is about $500 per annum (Depositions No. 1, p. 196.

That sail vessels by special permission of the owner occasionally — at the said wharf, from which said vessels a small wharfage is collected (Depositions No. 1, p. 179); that the vessels of the defendant are landing at the said wharf without permission of the owner, though the said owner has since the date of the said lease received

wharfage from the said defendant, (Depositions No. 1, p. 180; Depositions No. 2, p. 68); that there is no obstruction upon the said wharf or at the shore end thereof, preventing access thereto, and that the shore end of the said wharf is in use by the public in going to, receiving and shipping freight therefrom (Depositions No. 1, p. 188); that there is a warehouse upon the pierhead of the said wharf, and that by permission of the owner persons engaged in the oyster business have buildings upon the said pier-head (Depositions No. 1, p. 191) and that the said pier-head is in the navigable waters of the Rappahannock River;

That there is a post office at this point, and that mail is received at and sent from the same over the said wharf (Depositions No. 1, p. 189); that the said wharf is the usual or regular shipping point for persons living in the neighborhood thereof, and for a considerable distance back into the surrounding country, and that the general character of the freight received at and shipped over the said wharf consists of general merchandise and the general products of the country, (Depositions No. 1, pp. 183, 193); that there is no evidence of a public road having been opened and accepted by the county authorities; that there is a private road used by the public in going to and coming from the said wharf, and that the said road was not opened until after the said wharf had been erected (Depositions No. 1, pp. 186, 187; see also Defendant's Exhibit "U," p. 4.)

139 8. *Findings of Facts as to Port Royal Wharf Property.*

That by successive conveyances, the first of which being dated the 25th of April, 1866, the fee simple title to said property is now vested in the Weems Steamboat Company, the complainant herein, and that in all of the title deeds filed by the complainant as exhibits concerning said property, the same is specifically mentioned as being wharf property (Plaintiff's Exhibi-s Nos. 52, 53, 54, 55); that the complainant employs an agent at said wharf (Depositions No. 1, p. 102); that occasionally fish vessels land at the said wharf, and that the steamers of the defendant company also land there, but under protest (Depositions No. 1, p. 102); that said defendant has tendered to the complainant wharfage for the privilege of landing at said wharf, but that the same has been rejected and returned by the complainant (Depositions No. 2, p. 73); that there is a warehouse for the storage of freight on the said wharf; that the said wharf is repaired at the expense of the complainant; that the same is assessed for taxation, and the taxes thereon paid by the complainant (Depositions No. 1, p. 121); that the said complainant has from time to time, by posted notices, warned the public against trespassing on the said property (Depositions No. 1 p. 104); that the pier-head of the said wharf is in the navigable waters of the Rappahannock River (Depos. No. 2, p. 107); that the said wharf is the usual or regular shipping point for citizens of the County living in the vicinity and for some distance in the interior, (Depos. No. 1, p. 108); that there is a post office at this point and that mail is carried to and from the same over the said wharf (Depos. No. 1, p. 112); that there is no obstruction

on the said wharf, or the approaches thereto, preventing access to the said wharf (Depos. No. 1, p. 112); that the public make use of the shore end of said wharf at pleasure, in going to, shipping and receiving freight therefrom (Depos. No. 2, p. 109); that occasionally railroad ties and other property are stored along and at the shore end of said wharf (Depos. No. 1, p. 112); that sailing vessels have landed at the said wharf to receive shipments of grain (Depos. No. 1, p. 107), but there is no sufficient evidence that the complainand received wharfage from the said vessels for the said privilege (Depos. No. 2, p. 112);

That there is a ferry maintained at this point, and that the ferry boat occasionally lands upon the wharf property (Depos. No. 2, p. 108); that Port Royal is an incorporated town and was incorporated in the year 1738 (5 Hennings Stat. 287) (Defendants' Exhibit "Y"); that the present owners have rebuilt the Wharf at this point since the year 1874 (Depos. 1, p. 146), and that there is no evidence tending to prove that a wharf existed at this point prior to this time Plaintiff's Exhibit No. 52), but there is no evidence to show when the first and original wharf was constructed at this point.

140

The Special Master finds that the evidence produced by the defendant to show that the said wharf lies at the foot of a public street or highway, is inconclusive (Depos: 1, p. 104) and that even if such were the case, in the absence of evidence showing precisely when the first wharf was built at this point it is impossible under the ancient laws of Virginia for a private wharf to be constructed at the foot of a public street in an incorporated town. Hardy *vs.* McCullough, 23 Gratt. 251, 262.

9. *Findings of Fact as to Leedstown Wharf Property.*

That by successive conveyances, the first of which being dated the 29th of October, 1863, the fee simple title to the said property is vested in the Weems Steamboat Company, complainant herein (Plaintiff's Exhibits Nos. 74, 75, 76, 77, 78, 79) and from the said title deeds it appears that a wharf existed at this point as early as the year 1869 (Plaintiff's Exhibit No. 79); that the complainant employees an agent at the said wharf (Depos: No. 1, p. 198), and that the said agent has been instructed by the complainant not to permit vessels of other boats to make use of the said wharf (Depos: No. 1, p. 198);

That there is a post office at this point, and that mail is sent to and received from the said post-office over the said wharf; that the pierhead thereof is in the navigable waters of the Rappahannock River (Depos: No. 1, p. 200); that freight received at and shipped from the said wharf consists of general merchandise and the general products of the country; that the said wharf is used by citizens living in the vicinity, and for some distance back in the interior (Depos: No. 1, p. 201); that there are no obstructions upon the said wharf, or at the shore and thereof preventing free access thereto, and that the public are in the habit of making use of the same in going to, receiv-

ing and shipping freight over the said wharf (Depos. No. 1, p. 202); that vessels of the defendant have landed, and are landing at the said wharf under protest, and that wharfage has been tendered by the defendant to the complainant, for this privilege, but the tender has been refused by the complainant's (Depos: No. 2, p. 73, Exhibit F); that the defendant has introduced evidence tending to
141 prove that a part of the pier-head of the complainant's wharf extends beyond a prolongation of its shore line, and to some extent abuts upon the shore line of other riparian owners (Defendant's Exhibit "F"; Depos: No. 2, p. 24 et seq.)

The Special Master finds that in so much as no evidence is introduced to show the relation of the complainant's shore line to the line of navigability (Groner *vs.* Foster, 94 Va. 650), that this fact is not established, and in any event, for the reasons hereinafter stated by the Special Master in his conclusions of law, the defendant can not profit by this fact even if established.

10 *Findings of Fact as to Wellford's Wharf Property.*

That by successive conveyances, the first of which being dated the 5th of March, 1875, the fee simple title to the said property is now vested in the Weems Steamboat Company, the complainant herein (Plaintiff's Exhibits Nos. 34, 35, 36, 37, 38, 39, 40, 41, 42);

That the complainant maintains a wharf agent at this point (Depos; No. 1, p. 51); that occasionally sail vessels land at the said wharf (Depos: No. 1, p. 51, p. 122), but no wharfage appears to have been collected therefrom (Depos: No. 1, p. 52), that the vessels of the defendant Company land at the said wharf under protest (Depos: No. 1, p. 52); that wharfage for the said privilege was tendered to the complainant company, and by it returned (Depos: No. 2, p. 73); and that the said complainant company has posted notices on the said wharf warning vessels and steamers from trespassing thereon; that occasionally sail vessels have landed there by special permission of the complainant company (Depos: No. 1, p. 124); that there is no obstruction on the said wharf, or at the shore end thereof preventing free access thereto by the public (Depos: No. 1, pp. 54, 57); that there is a post office at this point, and that mail is received at and sent from the same over the said wharf (Depos: No. 1, p. 55); that the character of the freight received at and shipped over the wharf consists of general merchandise and the general products of the country, and that the said wharf is used by citizens of the County living in the vicinity and for some distance back in the interior (Depos: No. 1, p. 55; Depos: No. 2, p. 124); that it appears from Defendant's Exhibits "N" and "X," that by an order of the County Court of Richmond County, entered on the 8th day of July, 1890, in which said county the said wharf is situated, that the said Court ordered the opening of a public road to
142 Pittsville Wharf, and that Pittsville Wharf was afterwards called Wellford's Wharf, from which said exhibits the Special Master concludes that the said road was opened and established subsequent to the erection of the said wharf.

11. *Finding of Fact as to Sharp's Wharf Property.*

That by successive conveyances the first of which being dated December 26, 1872, the fee simple title to the said wharf property is now vested in the Weems Steamboat Company, the Complain-t herein (Plaintiff's Exhibit Nos. 63, 64, 65, 66), in all of which said titles deeds said property is specifically mentioned as being wharf property; that the complainant company maintains a wharf agent at this point, and that the said agent has been instructed not to permit vessels of any description to land at said wharf without the consent of the said complainant (Depos: No. 1, p. 61); that said agent has not received any wharfage for such privilege (Depos: No. 1, p. 62) that vessels of the defendant company land at said wharf under protest (Depos: No. 1, p. 122); that the shore end of the said wharf consists of a sandy beach (Depos: No. 2, p. 86-; and that the public make use of the said shore end of the wharf in going to, shipping and receiving freight over the said wharf (Depos: No. 2, p. 8); that there is a post office at this point and that mail is carried to and from the same over the said wharf (Depos.: No. 2, p. 8); that the said wharf is the usual or regular shipping point for citizens of the county living in the vicinity and for some distance back in the interior (Depos: No. 2, p. 9); that the said wharf is si-uated in the County of Richmond, in a village formerly known as Milton (Depos: No. 2, p. 80), and that by an order of the County Court of the said County, dated the 2nd day of June, 1879, it appears that a public road was open to the said village of Milton. The petition for the opening of said road states that the "Village of Milton, the terminus of the proposed road, is the location of one of the most important steamboat wharves on the river," &c. from which said exhibit the Special Master concludes that the said road was opened and established subsequent to the building of a wharf at this point (Depos: No. 2, p. 96).

The Special Master further finds as matters of fact without special reference to any particular wharf involved in this controversy, but in general applicable to all of them, that the Complainant Company and its predecessors have been operating steamboats upon the Rappahannock River since the year 1874, and for some prior thereto (Depos: No. 1, p. 114);

143 That the wharves owned by the said complain-t on the Rappahannock River, have never been expressly dedicated to public use (Depos: No. 1, p. 123), and that the said complainant is now operating a line of steamboats upon said river stopping regularly at all the wharves involved in this controversy (Depos: No. 1, p. 119) that the establishment of the defendant company of a day boat service between Fredericksburg and Urbanna has had a beneficial effect upon the general business of the city of Fredericksburg (Depos: No. 2, pp. 105, 106).

Conclusions of Law.

Referring now more particularly and specifically to the several question involved in this controversy, as to which the Special Master was directed to take evidence, to-wit: the title to the several wharves heretofore mentioned and claimed by complainant, its riparian rights, and as to the character of said wharves, whether private or public, the Special Master reports as follows:

That the complain-t company is the fee simple owner of the several wharves to which it claims ownership in the Bill filed herein; that it is the lessee of the several other wharves mentioned in the said Bill and involved in this controversy; and being in possession of the said wharves as such lessee, is to be regarded as the owner thereof for the purposes of this suit, and may maintain to the same extent as any other owner, in possession, trespass, or may seek protection of its rights in a court of equity. (18 Am. & Eng. Ency. (ed.) 453.)

That as riparian proprietors "owning land upon a water course" in Virginia, the complainant and its predecessors in title to the various wharves it now claims to own, and the lessors of the wharves leased by the complainant, possess the right "to erect a wharf on the same, or pier or bulkhead in such water course opposite its land; provided the navigation be not obstructed, nor the private rights to any other person be otherwise injured thereby" (Sec. 998, Code of Va.); such having been the law in Virginia certainly since the year 1839 (Acts, 1839-'40 Ch. 71, p. 57);

Norfolk *vs.* Cooke, 27 Gratt. 430;
Railway Co. *vs.* Faunce, 31 Gratt. 761, 764.

As to the character of the said wharves, whether public or private, the Special Master concludes from the documentary evidence submitted by the defendant company, its cross-examination of
144 plaintiff's witnesses, and its evidence in rebuttal, that it claims the right to land its vessels at the said several wharves upon the following grounds, to-wit:

(*a*) For the reason that an easement therein has been dedicated to the public by virtue of long continued and uninterrupted user thereof by the public;

(*b*) That the complainant company and its said several lessors, are thereby precluded from discriminating against the defendant company;

(*c*) Because public roads terminate at such wharves; or, conversely, such wharves are erected at the termination of the public roads;

(*d*) Because a private wharf can not be maintained in navigable waters;

(*e*) Because a portion at least of each of the said wharves extends beyond low water mark, and is in the navigable waters of the Rappahannock River; and the Rappahannock being a navigable river, is a public highway; that therefore, the defendant company pos-

sesses the right, by means of its vessels, to navigate any of the navigable portions thereof.

(*f*) That the said wharves have become public in their character by reason of public necessity.

Taking up the said claims in due order, the Special Master find as matter of law as follows:

A.

That intent is the vital principle of dedication, and the burden of proof is upon the defendant to decisively and unequivocably establish such intent.

Harris *vs.* Commonwealth, 20 Gratt. 833;
City of Richmond *vs.* Bowe, 24 Gratt. 149;
Talbott *vs.* Railway Co., 31 Gratt. 688.

That where there is no express dedication the conduct of the parties may be looked to for the purpose of showing intent to dedicate.

145 Talbott *vs.* Railway Co. 31 Gratt. 693.

That "where no public or private interests have been acquired upon the faith of the supposed dedication, the mere user by the public * * * although long continued, should be regarded as a mere license revocable at the pleasure of the owner."

Harris's Case, 20 Gratt. 840.

That it has been held that the principles applicable to the dedication of highways does not extend to wharves.

Palen *vs.* Ocean City, 64 N. J. L., 672;
Thomas *vs.* Ford, 63 Md., 354;
Pearsall *vs.* Post, 20 Wend, 111.

and that such dedication to public use must be followed by abandonment of exclusive enjoyment.

Flack *vs.* Green Island, 122 N. Y. 107.

The Special Master finds that there has been no abandonment of exclusive enjoyment of any of the said wharves, but that on the contrary all of them were built either by the complainant company or by private individuals, as sources of revenue; that all the said wharf properties are assessed for taxation and taxes paid thereon by their respective owners.

Vaughan *vs.* Lewis, 89 Va. 187;
Irwin *vs.* Dixion, 9 How. 10.

That there is no evidence to show that the county authorities have ever exercised any control over the said wharves, or that there has been any acceptance of the same.

Exterkamp *vs.* Covington Harbor Co. 104 Ky. 796 (1898);
Lewis *vs.* Portland, 25 Ore., 156;

and that the notices posted on its said several wharves by the complainant refutes the claim of abandonment to public use;

Durgin *vs.* City of Lowell, 85 Mass. 398;
Daniels *vs.* Almy, 18 R. I. 330;
Lewis *vs.* Portland, 25 Ore, 156;

and that an intent to dedicate to public use is not shown by failure to fence in or otherwise obstruct the approaches to the said
146 wharf, or by otherwise obstruct- the approaches to the said wharf, or by allowing the public to travel along and over the said wharves;

9 Am. Eng. Ency. 40.

As was said by the Court in the case of Irwin *vs.* Dixon, 9 How. 33 (a case bearing close analogy to this controversy; regarding wharf property in the city of Alexandria Va. decided in 1850): "From the very nature of wharf property the access must be kept open for convenience of the owner, and his customers, but no one ever supposed that the property thereby became public instead of private, and especially under such numerous and decisive circumstances as existed here rebutting such an inference."

The Special Master, therefore, concludes that the public possessed a mere license to use the said wharves, and that the said license is revocable at the pleasure of the owner;

Gaines *vs.* Merriman, 95 Va. 660;
McLelland *vs.* Taylor, 54 S. C. 430 (1898);
Noftsger *vs.* Barkdoll, 148 Ind., 531.

The Special Master further finds that whereas a license has been extended to the public to make use of the said wharves for the purpose of going to and from vessels landing thereat and receiving freight from and delivering freight to said vessels, that the evidence tending to show the granting of a license to vessels to moor at said wharves is fragmentary and inconclusive; and in any event, a license to go upon land for one purpose does not justify an entry for another purpose.

18 Am. & Eng. Ency. Law, 1135;
Norton *vs.* Craig, 68 Maine, 275;

Nor is the fact that the United States mail is carried over the said roads to and from the post offices located thereat, sufficient evidence in the opinion of the Special Master to show an intention to dedicate an easement to the public. The said wharves during the time the mail is being carried across them, under the laws of the United States (Rev. Stats. U. S., Sec. (3964), thereby becomes post routes. To imply from this fact alone that the wharves are public highways, when there has been no condemnation of the same, as to which there is no evidence whatsoever, would necessarily be opposed to the express provisions of the Constitution of the United States in this, that it would be a taking of private property without compensation.

147 B.

The Special Master further finds that the said several wharves being private, and not public, in their character, that the several owners thereof possess the right to discriminate against the said defendant company. As was said by the Court in the case of Bogart *vs.* Haight, 20 Barber (N. Y.) 251 (1855), distinguishing the case of Heaney *vs.* Heaney, 2 Den. (N. Y) 625:

"The plaintiff was a wharfinger and warehouseman. His employment, however, was a merely private one; he was under no legal obligation to allow the use of his wharf *of* warehouse to every person applying, even if he had suitable accommodations and a reasonable reward was offered him, but he might limit the general license, or terminate it in the case of any particular person, by giving them notice not to come upon the premises." O'Neal *vs.* Arnett, 27 N. J. L. 290.

In Ilwaco *vs.* Oregon Short Line, 57 Fed. Rep. 673 (6 C. C. A. 495), Mr Justice McKenna in delivering the opinion (reversing Oregon Short Line *vs.* Ilwaco Railway Co. 51 Fed. Rep. 611, which came up from the Circuit Court) said, in discussing the matter of discrimination, that the princip*al* applied in the Express Company Cases, 117 U. S. 29, applied to the case at bar. In the Express Company cases, *supra,* Mr. Chief Justice Waite, delivering the opinion, said:

"The legislature may impose a duty, and when imposed it will if necessary be enforced by the courts, but unless the duty has been created either by usage or by contract, or by the statute, the courts can not be called upon to give it effect.

Also to the same effect.

Eterkamp *vs.* Covington Harbor Co. 104 Ky. 796;
Sharp *vs.* Whiteside, 19 Fed. Rep., 156.

C.

As to the matter of wharves located at the termini of roads, &c.: The Special Master finds that as to practically all of the wharves the evidence is clear that such roads as lead thereto were opened or established subsequently to the erection of the said wharves, and that as to none of the roads is the evidence definite and conclusive that the road was established prior to the erection of the wharf.

148 Under these circumstances, the Special Master finds an opinion of the Court in the case of California Navigation company *vs.* Union Transportation Co., 126 Cal. 433, to be particularly applicable. The facts involved in the said case were identical with those of the case at bar, and the Court there said:

"The roads come to the landing; the landing did not go to the roads. The dedication of the roads was entirely consistent with nondedication of land for Wharfage purposes. We know of no princip*al* of law that would justify us in holding that the owner of the soil over which said highway is laid out, is to be deemed to have dedicated the banks or shores to the common use of the public for landing purposes by dedicating a strip of land as a highway."

D.

As to the claim that a private wharf can not be maintained in navigable waters:

The Special Master finds this point to have been passed upon by the Supreme Court of Virginia in the case of Hardy *vs.* McCullough (1873), in which the Court held that a private wharf might exist in navigable waters.

Also, in the case of Railway Company *vs.* Faunce, 31 Gratt. 761, 764, in which the Court said (Staples, J. delivering the opinion):

"It has been held in numerous cases that the owner of land bounded on a navigable stream, has certain rights *whether his title extends to the middle of the stream or not.* Among these are free access to the navigable part of the stream, and the right to make a landing wharf or pier for his own use, or for the use of the public."

In the case of Transportation Company *vs.* Parkersburg, 107 U. S. 791, 699 (1882), the Court held:

"That such wharves (referring to private wharves) may he held and owned even on a navigable river, is not open to controversy. It was so decided by this Court in Dutton *vs.* Strong, 1 Black, 23, and in Yates *vs.* Milwaukee, 10 Wall. 497."

E.

As to the point that in so much as the pier-heads, or at least a part of each of the said wharves, extends beyond low-water mark,
149 and is therefore, to that extent, erected in the navigable waters of the Rappahannock, that the defendant possesses the right, in consequence thereof, to land at the said wharves.

The Special Master finds that under the laws of Virginia, though the title of a riparian owner probably extends only to low-water mark, yet as such riparian owner the right to erect a pier bulkhead or wharf at or beyond low-water mark, and in the navigable waters, attaches to the land.

French *vs.* Bankhead, 11 Gratt. 159;
Shiveley *vs.* Bowlby, 152 U. S. 125;
Norfolk *vs.* Cooke, 27 Gratt. 430.

The Special Master is further of the opinion that even though such right were not possessed by riparian owners, and if the complainant were in possession of land, "the fee of which is in the State, it has its remedy. This gives the (defendant) no right of entry upon such land for any purpose." Wetmore *vs.* Brooklyn Gas Co. 42 N. Y., 384 (1870.) And as was said by the Court in the case of Atlantic W. L. Co., 37 Barb. 96;

"It would be going to an extreme length to contend that every pier or wharf constructed with the sanction of the State, and under legal right by private individuals in or upon the channel of a navigable stream must become a public highway like the river, and could not be withdrawn from public use."

Also Coney *vs.* Steamboat Co. 42 S. E. Rep. 498 (Ga.) (Aug. 8, 1902.)

F.

As to the claim that the said wharves are public in their character, by reason of public necessity:

The Special Master finds that in so much that the said wharves were built under a right incident to riparian ownership that the owners thereof, however urgent the public necessity may be can not be deprived thereof, except upon legal proceedings for the purpose, and upon making due compensation. As was said by Staples, J. in the case of Railway Company *vs.* Faunce, 31 Gratt. 761-764, *supra,* referring to riparian rights:

"These rights are valuable and are property, and can be taken for the public good only upon due compensation made."

150 Coney *vs.* Steamboat Co. 42 S. E. Rep. 498;
Express Company Cases, 117 U. S. 29.
Yates *vs.* Milwaukee, 10 Wall., 497;
Shepards Co. *vs.* Atlantic Hotel, 44 S. E. Rep. 45;

The Special Master reports that in his investigation of the law bearing upon the questions involved in this controversy, he has consulted among numerous other cases and has been specially referred by Counsel for the defendant, to the following—which to some extent tend to support the same—to-wit:

Transportation Co. *vs.* Parkersburg, 107 U. S. 691, 699 (1882).

In this case, however, the Court expressly held that a private wharf be built and owned even on a navigable river.

Also the case of Indian River S. B. Co. *vs.* E. C. Trasp. Co., 10 Southern Rep. 480.

The Special Master finds that this case was decided under a Florida statute, and that the facts therein are entirely dissimilar from those involved in the present controversy; and that even in the said case the Court expressly recognized the right of private ownership of a wharf in a navigable river. The said case is further distinguished by Mr. Justice McKenna, in the case of Ilwaco Ry. Co. *vs.* Oregon Short Line, 57 Fed. Rep. 763 therein reversing, as heretofore stated, the Circuit Court in the case of Oregon Short Line *vs.* Ilwaco Ry. Co. 51 Fed. Rep. 611, to which latter case the Special Master was also referred.

In the case of Sherlock *vs.* Bainbridge, 41 Ind. 35, the Court held that "anyone navigating the river ha[illegible]e right to land at such wharf as suits his convenience."

The Special Master is of the opinion, however, that in so much as this particular point was not involved in the controversy, that the above expressed opinion of the Court was mere dictum, and the Special Master is confirmed in this opinion by the dissent of Downey, J. (p. 48), in the said case, in which he stated: "The decision in this case—*Unnecessarily and improperly* subordinates the rights of the riparian proprietor to the more convenience of the navigator." In any event, the Court in the said case does not distinguish between private and public wharves.

In the case of Barrington *vs.* Commercial Dock Company (1896)

33 L. R. A. 116, the Court expressly held that the wharf property therein involved was public in its character.

The Special Master has not been able to consult the official report of the case of Degan *vs.* Dunlap, 15 Philada. 69, (1882) de-
151 cided in the Court of Common Pleas, but accepts the copy of the said case filed with him by counsel for the defendant to be true and correct. The Special Master concludes after due consideration of the said case, that the rights of riparian proprietors in Pennsylvania are not the same as those possessed by such proprietors in Virginia and in any event the Special Master finds that the said case is not in harmony with the Virginia, Kentucky, California, South Carolina and New York cases, and cases decided in the Federal Courts, heretofore cited or referred to in this report.

The Special Master further reports that he finds nothing in the opinion in the case of City of Petersburg *vs.* Appelgarth, 28 Gratt. 321, in conflict with any of the findings of law heretofore set forth.

For the reasons herein stated, the Special Master respectfully recommends that the application of the complainant company for an injunction, be granted.

The Special Master returns herewith the following papers and other documentary evidence filed with him by the respective parties:

(1) Stenographic Report of Evidence taken before the Special Master in the City of Fredericksburg on August 4th, 5th and 6th, 1903, marked "Deposition No. 1."

(2) Stenographic Report of Evidence taken before the Special Master in the said city on the 26th, 27th and 28th of August, 1903, marked "Depositions No. 2.";

(3) Complainant's Exhibits Nos. 1 to 94 inclusive;

(4) Defendant's Exhibits "A" to "AA" inclusive;

(5) Brief of Counsel for Complainant;

(6) Memorandum of Authorities filed with Special Master, by Counsel for Defendant;

(7) Correspondence of Special Master with Counsel for the said parties, relating to the closing of the depositions;

All of which is respectfully submitted:

E. M. LONG,
Special Master.

Richmond, Va., Oct. 26th, 1903.

152 *Notice of Special Master to Take Evidence.*

(Filed with Special Master's Report.)

In the Circuit Court of the United States for the Eastern District of Virginia.

WEEMS STEAMBOAT CO., Complainant,
against
PEOPLE'S STEAMBOAT CO., Defendant.

To St. Geo. R. Fitzhugh, Esq., and Geo. W. Williams, Esq., Counsel for Complainant, and Wm. D. Carter, Esq., and Alvin T. Embrey, Esq., Counsel for Defendant:

Take Notice.—That by virtue of an order of reference, entered in above-styled cause on the 16th. day of June 1903, I shall, on the 4th day of Aug. 1903; between the hours of 11 o'clock a. m. and 6 o'clock p. m. in the Court room in the City of Fredericksburg, Va., proceed to take such evidence as may be submitted to me, by either party to the above-styled cause, depending in the said Circuit Court of the U. S., or as I may find necessary to take bearing upon the title to the several wharves mentioned in the said Complainant's bill, and claimed by Complainant; what riparian rights passed to the Complainant, with the acquisition of said wharves, and whether or not the said wharves are public or private, and the character of each of them;

And if, from any cause, the taking of the said evidence be not commenced on that day, or, if commenced, if it be not completed on that day, the taking of the same will be adjourned and continued from time to time at the same place and between the same hours, or at any other place and between any other hours as may be agreed upon, until the same is completed.

Respectfully,

E. M. LONG,
Special Master.

We accept due service of the above:

ST. GEO. R. FITZHUGH,
For Plaintiff.

WM. D. CARTER,
For Defendant.

153 *Depositions on Behalf of Plaintiff.*

Filed with Special Master's Report October 26th, 1903.

FREDERICKSBURG, VA., *August* 4, 1903.

Depositions taken before E. M. Long, Special Master of the Circuit Court of the United States for the Eastern District of Virginia, in the suit of the Weems Steamboat Company *vs.* People's Steamboat Company, depending in said Court, by virtue of the annexed order of reference, and in pursuance of the annexed notice, at the office of St. George R. Fitzhugh, in the town of Fredericksburg, Virginia, between the hours of 11 a. m. and 6 p. m., on the 4th day of August, 1903.

Present:

St. George R. Fitzhugh, George Weems Williams, Counsel for Plaintiff;
William D. Carter, Alvin T. Embrey, Counsel for Defendant.

B. L. FARINHOLT, being introduced as a witness on behalf of the Plaintiff, and first duly sworn, deposed as follows:

By Mr. FITZHUGH:

Q. Please state your age, residence and occupation?

A. I am 64 years of age; my residence is at West Point, Va.; I have been engaged in the real estate business for sometime past.

Q. Have you resided on the Rappahannock River at any point; if so, where, and for what length of time?

A. I resided on the Rappahannock River from 1869 until 1900—that is, my legal residence. I resided in Essex County and Lancaster County.

Q. What was your business during your residence on the Rappahannock River?

A. I was engaged in mercantile business—handling lumber, and having mercantile stores.

Q. Please state who are the present owners of two wharves on the Rappahannock River known respectively as Bayport and Monaskon?

A. I think virtually I am, sir. Technically the property stands in the name of Minnie L. Farinholt (now Minnie L. Richardson, wife of Dr. Richardson, of West Point)—that is, the Monas-
154 kon property; and the Bayport property, if I am not mistaken, stands in the name of my wife. I have always managed those properties from the time of building of one in 1872, I think—that is Bayport—and personally received the revenue from it. I have always managed Monaskon property since 1887, I think I purchased it, and personally received the revenue from it.

Q. Please examine the deeds now handed you marked "Exhibits No. 1" and state whether or not those are the deeds by which your wife and daughter acquired title to that property?

A. Yes, sir; this is the deed by which my wife, I think, acquired title to the property in Middlesex—the Bayport property.

Q. Is that a deed from you to your wife, bearing date the 29th day of June, 1892?

A. It is, sir.

Q. What property did this deed of the 29th of June, 1892, from you to your wife, convey?

A. The property therein stated.

Q. Can you not tell what the property is—the name of it?

A. This deed conveys the three pieces—65 acres bought from one party; three acres bought from another party, and a one-third interest in the mill property, at the same place.

Q. Does or does not that deed convey the Bayport Wharf property on Rappahannock River?

A. It does, sir.

Q. Please state whether or not the wharf property known as Bayport, is on the three acres of land described in said deed as bought by you from one T. C. Montague and others?

A. It abuts on that three acres.

Q. It is not a part of the three acres?

A. It abuts on that three acres; it isn't for me to decide whether wharf property is realty or personalty.

Q. You know to "abut" on it is not to be a part of it?

A. It is described as being conveyed to my wife in that deed, as near as I could possibly do it—I covered it in the deed—you see it mentioned in the deed.

Q. You say in this deed that you convey to your wife all the realty now owned by you at Bayport, Middlesex County, Virginia, including three acres of land bought of one T. C. Montague & others situated fronting on the southern bank of the Rappahannock River; and the store and wharf property thereon. Now I wish to know whether the wharf property is on this three acres of ground which you say fronts on the south side of the Rappahannock River?

A. I so considered it from the wording of that deed at the time, and so consider it now.

Q. Then am I or not to understand that at the time you made this deed you owned three acres of land fronting on the Rappahannock River, and that this wharf is on those three acres?

A. Yes.

155 Q. Then do I understand, or not, that it is a fact that the wharf is built on these three acres of ground which is on the banks of the Rappahannock River?

A. I leave you to determine that, sir; I can not answer it.

Q. Then you must give me some material to determine it out of?

A. I have told you all I can possibly tell about that. I can not state a thing which is different from my belief.

Q. I don't want you to; I just want you to state your knowledge?

A. I don't understand that any wharf in the world is built on dry land.

Q. What is it built on?

A. Built in the river, on the mud bottom.

Q. Without any connection with the dry land?

A. I just said, sir, that it abbutted on the dry land, and I considered it a part of the property there.

Q. Will you describe what you consider constituted a wharf—or the Bayport Wharf?

A. The Bayport Wharf is a construction of timber abbutting on the land, and leading out into the river to where steamers or other vessels can stop at and deliver their freight and passengers—and receive freight and passengers.

Q. Will you describe the Bayport Wharf as to its dimensions, starting with the dry land?

A. The Bayport Wharf commences on the shore near the buildings at that point, and occupies a space of about 12 feet wide, running out into the river approximately a thousand feet, where it abuts on the pier-head approximately 50 x 70 feet in area.

Q. How much of the three acres described in this deed actually constitutes a part of the banks of the Rappahannock River—what frontage—approximately, of course?

A. About 400 yards, as near as I can come at it.

Q. Then am I, or not, to understand that under this deed your wife owns 400 yards of the bank of the Rappahannock River at Bayport Wharf?

A. The deed is for three acres—and whatever of said three acres fronts on the Rappahannock.

Q. Then am I, or not, to understand that under this deed your wife owns a frontage of 400 yards at Bayport Wharf upon the Rappahannock River?

A. Following the other question, yes.

Q. Did you, or not, obtain this Bayport Wharf property under deed from T. C. Montague and others?

A. I obtained the three acres of land from T. C. Montague and others, and built the wharf abbutting of the three acres.

Q. Please examine the deed attached to Exhibit No. 1 and state whether or not that is a copy of the deed?

A. That is corrrect, sir.

156 Q. Your deed of the 30th day of June, 1892, to Minnie L. Farinholt, your daughter, conveys the tract of land described as follows: "Situated at Monaskon, Lancaster County, Virginia, adjoining the lands of D. Landreth & Sons and Mrs. M. D. Carter, and fronting on the south of the Rappahannock River, containing eighty-five acres, be the same more or less, with all the improvements, buildings, wharf, tenements and privileges, and right of every description belonging to the same and all right, title and income belonging to said land and the steamboat wharf attached thereto." Is the wharf known as Monaskon Wharf a part of this property described and conveyed?

A. Yes.

Q. Please examine the paper now handed to you which purports to be a lease from you to the Weems Steamboat Company, of the two wharves we have been speaking about, to wit, Bayport and Mo-

naskon, and state whether that is the lease executed by you? (Hands witness paper marked "Plaintiff's Exhibit K".)

A. Yes.

Q. These two properties we have seen stand in the names of your wife and daughter respectively. Were you or not authorized by them to execute this lease?

A. They knew of and recognized that lease as entirely agreeable to follow my duty and disposition under the circumstances.

Q. Did they authorize the execution of this lease by you, or have they sanctioned in since its execution?

A. They both authorized and sanctioned it.

Q. You state that you built the Bayport Wharf. Did you, or not, build the Monaskon Wharf?

A. It was in a very dilapidated condition when I purchased the property, and I have rebuilt in twice since—once immediately upon getting it, and once since.

Q. Will you state how much of the tract of land which you conveyed by the deed to your daughter fronts on the Rappahannock River?

A. It is nearly half a mile.

Q. How long have you owned the Monaskon Wharf property, and from whom did you acquire it?

A. I ha-e owned it since 1888. I acquired it by taking the place of a purchaser from Mrs. Carter. I have paid for it, but Mrs. Carter has not yet made me a deed.

Q. Please examine the paper now handed you marked "Exhibit No. 3" which purports to be a diagram of the Bayport Wharf property, and state whether or not it is a correct diagram of the same?

A. Approximately it is correct.

Q. Please examine the paper now handed you marked "Exhibit No. 4" which purports to be a diagram of Monaskon Wharf property, and state whether or not said diagram is correct?

A. Approximately it is correct.

157 Q. When did you build the Bayport Wharf?

A. In the year 1870.

Q. Did you or not have any contract for the lease of these wharves, or either of them, to the Weems line, prior to this lease which has been produced and identified by you? If so, when?

A. I had no written lease before this one.

Q. Well, state if you had any agreement with the Weems Line prior to the execution of this lease in January; if so, what was it?

A. The oral understanding between the Weems Line and myself was that they were to use these wharves and pay me ten per cent. on the freights that were shipped and received over them—freights and passengers.

Q. How long was there any such understanding between you and the Weems Line?

A. From 1870 to about 1885. We received from the people shipping over our wharves a certain amount fixed by us annually on the freight that they shipped annually. In 1885, as near as I can remember, Mr. Williams proposed that we abandon charging the

shippers and he would pay ten per cent. on freight and passengers passing to and from his steamers. Thereafter we made no charge against the public, and the Weems Line has been the party from whom we collected whatever was due for the use of the wharves.

Q. This lease of January, 1903, gives to the Weems Line exclusive use and possession of said wharves, you reserving the privilege of allowing said vessels to land at said wharves. Was or was not your agreement prior to this lease with the Weems Line, of the same character as to exclusiveness of use?

A. The question was not brought up at all; there seemed to be no occasion for it.

Q. From and during the time of your ownership of these two wharves, did any other steamboat than those belonging to the Weems Line, receive or deliver freight at said wharves?

A. Yes, at Bayport, for a short while.

Q. State what steamboats received and delivered freight at Bayport, and the length of time, as near as you can?

A. The Eliza Hancock, for a few months.

Q. Under what kind of an agreement did the Eliza Hancock receive and deliver freight at Bayport?

A. We had no agreement with her. She was on the river a few months only, and paid me nothing. I don't know what she did for the others.

158 Cross-examination.

By Mr. CARTER:

Q. Please state how the bridge and pier-head at Bayport is supported, and what character of structure it is?

A. By piles driven in the mud, cap-sills, stringers and plank placed on those piles.

—. Please state whether or not the pier-head is in the navigable waters of the Rappahannock River?

A. It is.

Q. Please state, approximately, the purpose for which you built Bayport Wharf?

A. For the reception and delivery of freight and passengers and the steamboat line then travelling the route between Fredericksburg and Baltimore.

Q. Please state whose freight and what character of freight, was accustomed to be received and delivered over that wharf?

A. The merchandise from Baltimore for merchants in Middlesex and Essex Counties; the passengers to and from Baltimore and the neighborhood approximating the wharf.

Q. Please state whether or not there is a post office, and store, at Bayport?

A. There is a post office and store.

Q. Please state how far the store building is from the shore end of the wharf?

A. Within the distance of one hundred feet.

—. Please state whether or not the parties pass Bayport in going to the mill which you own an interest in?

A. They do, frequently.

Q. Please state whether or not the road which they travel passes the shore end of the wharf?

A. It passes very near it.

Q. In which direction from Bayport is the settlement called Owen Hill and the settlement called Laneview—in which direction from the wharf would you go to reach those places?

A. Direc-ly up the shore in a westerly direction.

Q. Please state whether or not there is a public road from these points to the wharf and the store and your mill?

Excepted to by Counsel for Plaintiff, on the ground that it can not be proven by oral testimony whether the road is public or not; the records of the County Court being the best evidence.

A. There is, to these points and beyond.

Answer also excepted to by Counsel for Plaintiff on same grounds as stated above.

159 Q. Please state whether or not a considerable space between the store building and the wharf is entirely open and dedicated to the use of the patrons of the store and the wharf who go there to ship and receive their freight?

Excepted to by Counsel for Plaintiff, because Witness can not know whether or not there has ever been a dedication.

A. The patrons of the wharf have always used a considerable space for their accommodation, between the store and the wharf.

Q. Please state whether or not this space is in such use to-day?

A. It is — frequent and constant use.

Q. Please state whether or not other vessels, than the steamers, from time to time make us- of the pier-head and wharf facilities at Bayport for loading and unloading at that point?

A. Vessels are allowed to make use of it by getting permission to land coal for such people as burn coal, and for the churches. No steamers have ever used it to my knowledge except the Eliza Hancock and the People's Line of Steamers, other than the Weems Line.

Q. Please state whether or not the pier-head is not in use by vessels in the oyster season from time to time?

A. No.

Q. Please state whether or not the Eliza Hancock was on the river later than a year 1885?

A. No, sir.

Q. Please state who is the agent or wharfinger in actual charge of Bayport?

A. R. H. Bland.

Q. Please state how long R. H. Bland has been the wharfinger there?

A. During his occupancy as lessee of the store property, which has been leased to him for ten years from January 1897.

Q. Please state whether or not any wharfage has been paid by the People's Steamboat Company for the use of the Bayport Wharf by

their Steamer "Tourist," since they have been running a line on the Rappahannock?

A. The Steamer Tourist paid some freight charges for the time she was running in 1902—I don't know how many months—I don't remember about that. The Steamer Tourist tendered freight charges for a portion of 1903; the amount tendered was returned to them for the year 1903, because the wharf had been leased to the Weems Steamboat Company.

Q. You used the term "freights"—do you mean wharfage?

A. Wharfage.

Q. Please state where the post office is kept at Bayport?

A. It is kept in the Bayport Store, which is the only store there—it is leased by Mr. R. H. Bland.

160 Q. Please state whether or not there are warehouses for the protection of freight on the pier-head at Bayport?

A. Yes, sir, there are.

Q. Please state whether or not the structure of the pier and pier-head at Monaskon are similar to that at Bayport?

A. Precisely similar.

Q. Is or not the pier head at Monaskon in the navigable waters of the Rappahannock River?

A. It is.

Q. Please state whether the road shown on the plat, which you have approved as approximately correct, leads from Monaskon Wharf?

A. It leads from Monaskon Wharf to the surrounding country, and connects with other roads leading all through the country.

Q. Please state whether the character of the traffic from Monaskon Wharf since you have been familiar with it?

A. For passengers and general freight from the neighborhood of this wharf, and for passengers and general freight from the steamers to that section of the country.

Q. Please state whether or not there is a post office at Monaskon?

A. There is.

Q. And where is the same kept?

A. It is kept in a building owned by D. Landreth & Company, within about 75 yards of the foot of the wharf.

Q. Please state whether or not there is a store at Monaskon?

A. There is a store-house there, but not occupied at present as a store.

Q. Within how recently has the store-house been occupied as a store?

A. It was occupied a portion of 1902—not since—as a store.

Q. Please state from what points the post office at Monaskon has a mail service?

A. It has a mail service from the steamers plying to and from Fredericksburg and Baltimore. It has a country mail service, or wagon mail service from Bore Post Office four or five miles away. It has a wagon mail service through the country to Mollusk Post Office; to Millenbeck and to Lively, four or five miles away, each.

Q. Please state whether or not the horse mails which you have

mentioned go to and from the Monaskon Post Office over the road shown on the plat?

A. They do.

Q. Please state whether or not there is an open space at the shore-end of the pier at Monaskon, used by the patrons of the wharf in receiving and delivering their freight, for the convenience of their teams to stand, &c.

A. There is.

Q. Please state whether or not the owner of Monaskon Wharf receives a revenue from the wharf in any way, and if so, how?

A. Yes, from the Weems Line Steamers.

161 Q. What is the character of the revenue derived by the owner from the Weems Line Steamers?

A. It has been 10% commission on freights and passenger travel, from about 1885, I think.

By Judge EMBREY:

Q. Is that the sole revenue from the wharf?

A. That is the sole revenue from the wharf except special charges made to vessels on delivering such freight as we may agree on beforehand; and such general permission as I give them to land coal for parties in the neighborhood using coal, and for the churches.

Q. Have you ever refused permission to any vessel to land there upon the payment of your charges?

A. Yes; and also refused special kinds of freight.

Q. Please state one or two instances, and tell the kinds of freight you objected to being landed there?

A. I refused vessels to land coal where they could not give assurance of having it gotten away from the pier-head within 48 hours, say. I refused to allow them to handle railway ties or timber over the wharf to load vessels with. If it were going to the steamers I did not refuse it.

Q. Why did you discriminate against freight going to be loaded on vessels, receiving the same character of freight going to the steamers?

A. Because the steamers received a very moderate quantity of such freight as I alluded to, which very much injures and wrecks the wharf in handling it, especially on the car; and there is no other way of handling it on the wharf except by hauling it out on heavy wagons, which we will not permit.

Q. Have you declined permission to any vessel to unload there on any ground except their inability or refusal to move the freight off the wharf in a time specified?

A. We very seldom have application for vessels to either load or unload there, and almost the only instance I remember is when they were unloading coal in the fall of the year for the neighborhood, or the churches.

Q. What freight do you usually charge then?

A. Twenty-five cents per ton.

Q. Please state if you know how that charge compares with the 10% charge received from the Weems Line?

A. It is less on the average, and simply consented to as a matter of accommodation to persons who are already patrons of the wharf, from the country.

162 By Mr. CARTER:

Q. Please state whether or not there are warehouses on the pier-head at Monaskon?

A. There is a warehouse for the accommodation of freight, and several oyster houses.

Q. To what purpose are the oyster houses put?

A. For receiving oysters from small boats and barreling them up for the steamers.

Redirect examination.

By Mr. FITZHUGH:

Q. You were asked by cross-examination for what purpose you erected wharves at Monaskon and Bayport, and your answer was for the receiving and delivering of freight to the boats traversing the Rappahannock River between Fredericksburg and Baltimore. What boats did you refer to?

A. The boats of the Weems Steamboat Company, since its name has been that, and whatever its name was prior to that.

By the SPECIAL MASTER:

Q. You have stated in your cross-examination that both the Bayport Wharf and the Monaskon Wharf extend into the navigable waters of the Rappahannock. What do you mean by that?

A. I mean such waters as will easily float vessels or steamers of such character as usually traverse the river, and in such waters as those wharves being erected it would impede navigation and make it necessary for you to obtain a special bill from the legislature of Virginia to have them erected.

Q. How far beyond the average low tide does the pier-head extend?

A. Probably five hundred feet.

Q. Did you receive permission from the legislature, by special act, to erect these wharves?

A. Monaskon wharf was erected when I bought the property, but in a very imperfect condition. I had a bill passed by the legislature for the improvement and extension of it—extending the right that the former parties had gotten.

Q. About what year was that?

A. I think about '96—no, some time afterwards. I used the old foundation and rebuilt upon that until about 1896 when I found that the sand from the shore was encroaching upon the depth of water to such an extent that it was necessary to extend the pier further in the river. Then I proceeded to get a new charter from the legislature for it, or new bill from the legislature, extending and enlarging it.

163 Q. Now about the Bayport Wharf, did you get a special act passed through the Virginia Legislature authorizing you to build or extend the wharf at Bayport?

A. I don't remember.

Q. Is it your impression that you got permission or applied for authority to erect a wharf at that point, either to the court or the legislature?

A. I don't remember, sir.

Q. You have stated that prior to the verbal lease entered into between yourself and the Weems Steamboat Company, that you were in the habit of charging patrons of the wharf a certain amount for its use. Do you remember what was the nature of that charge—was it a special arrangement entered into with each person, or upon what was it based?

A. It was based on what we conceived to be just and fair freight for each farmer and individual shipping over our wharf, after a conversation with them, to make it mutually agreeable.

Q. Then, as I understand it, it was based upon the estimated——

A. —valuation of what accommodation it would be to them, and what was just for us to receive for that accommodation.

Q. Now in charging passengers, what was your rate of charge?

A. It has been so long ago that I do not remember, but I think twenty-five cents.

Q. Did you charge all passengers alike?

A. No, sir, we did not; where a party paid a fixed rate to the wharf, we did not charge the passengers from his family at all; but that has been eighteen years ago, and I do not remember.

Q. You have stated that you charged vessels that now use the wharf——

A. Yes, I rather object to their using it at all; they are not responsible.

Q. Upon what do — base your charge?

A. Per ton.

Q. You stated that about coal—is that true of all freights?

A. It is the rarest thing in the world that we have any vessel landing anything else at the wharf—they know so well our objection to it that they do not attempt it, because any freight landed by a vessel is generally a very heavy cargo and requires a greater capacity that our two ton car can carry ashore, and with irresponsible parties loading it it might cost us thirty dollars a day by their breaking down the car.

Q. You have stated that you now have an agent on each of these wharves, as I understand it?

A. Yes.

Q. How long have you had an agent on these wharves?

A. Ever since I have owned them.

Q. What were the duties of such agents?

A. To receive the lines of the steamers when they arrive; to receive the manifest of the freight from the pursers of the steamers; to deliver to the pursers of the steamers manifests of the

164 freight; and to go over the freight to see that it is all there and taken aboard the steamer, and when the steamer was

ready to leave to cast off the lines of the steamer; thereafter to have the freight in the warehouse delivered to such parties as called for it, and see that they got their correct freight, and no other persons. I think that is about all, sir, and of course to attend to and keep the wharf in order, when necessary. He has only such authority to receive and collect wharfage on bills of freight that come through from other places than Baltimore, where a freight bill is attached from other cities or other places; then there is a charge additional to what the Weems Line charges for freight. In that case the Purser furnishes a bill to the agent and he collects it and pays it over to the purser.

Q. Prior to 1885, when you say you went into a verbal arrangement with the Weems Line, did the agent have authority to collect wharfage and passenger charges?

—. As a general thing he did not have that authority, unless he was also the merchant at the place. If he was the merchant at the place and we were furnishing him a stock of goods to sell, no doubt he had that authority, along with his other general powers of trade, and accounted for that cash as he would any other cash that he received.

And further this deponent saith not.

B. L. FARINHOLT.

NOTE BY SPECIAL MASTER.—By agreement between Counsel, the signature of the witness is waived.

A recess was here taken until 8 o'clock P. M., at which time the further taking of these depositions will be resumed at the office of Mr. W. D. Carter.

R. G. NEAL, another witness introduced on behalf of the plaintiff, being first duly sworn, deposed as follows:

By Mr. WILLIAMS:

Q. Please state your name and residence?

A. R. G. Neal; Bowler's Wharf, Essex County, Va.

Q. Will you look at this paper marked Exhibit "J" and filed with the Bill, and say whether or not you executed that paper. (Here hands witness paper marked "Exhibit No. 5.")

A. I did.

Q. Who owns Bowler's Wharf?

A. It is jointly owned by five children, heirs of R. M. Neal.

165 Q. Were you authorized by the other heirs and owners of Bowler's Wharf to execute that lease which you have just identified?

A. I was.

Q. I understand you to say that you are part owner?

A. I am.

Q. Did the Weems Line have control of Bowler's Wharf prior to the execution of the written lease which you have just identified?

A. It did.

Counsel for the defendant except to the foregoing question and answer, on the ground that the record filed in this case shows that Bowler's Wharf was a public wharf.

Q. Were the agreements prior to the lease which you have just identified, written or oral, and what was the nature of those agreements?

A. Before this agreement they were verbal.

Q. What was the nature of them?

A. Well, I have always understood that Mr. Williams had rented the wharf—had the exclusive right of the wharf.

Q. How long have you been familiar with Bowler's Wharf?

A. Well, I was raised there—born there—I suppose fifteen years I have come in contact with it.

Q. What vessels other than those of the Weems Line have landed there at Bowler's Wharf?

A. Well, I have had sail vessels there for my own use—none others. The Tourist, of the People's Line, has been landing there.

Q. Have you ever charged wharfage for any vessel landing there at Bowler's Wharf, except the Weems Steamboat Company's boats?

A. No vessels, no sir.

Q. Who was your guardian after your father's death?

A. W. T. Neal.

Q. Are you familiar with the signature of W. T. Neal?

A. I am.

Q. Will you look at this agreement and say whether or not that is the signature of your guardian?

A. Yes, sir, that is his signature.

Q. Have you, or have you not, at any time since you have been connected with Bowler's Wharf, held that wharf out to the public as a public wharf, to be used by anyone upon paying a wharfage?

A. I have not, no, sir.

Q. Do you and your co-owners pay taxes on Bowler's Wharf property?

A. Yes, sir.

Q. Do you keep it in repair?

A. Yes, sir.

Q. Who built Bowler's Wharf?

A. The last time it was built?

Q. Yes, sir.

A. I did—had it built.

166 Q. With whose money was it built?

A. Weems Steamboat Company.

Q. Did they advance you the money?

A. They did, yes, sir.

Q. For what purpose was that wharf built then?

A. For their use.

Cross-examination.

By Mr. CARTER:

Q. Is there not a public road from Santa Cross to Bowler's Wharf?
A. Yes, sir.

Counsel for Plaintiff excepts to the foregoing question and answer, upon the ground that the character of the road can not be established except by the records of the court.

Q. Please state the character of the business and traffic done over Bowler's Wharf?
A. Well, it is used for passengers and general freight merchandise.
Q. By whom is it so used?
A. By the merchants and farmers.
Q. For approximately what section of the country is Bowler's Wharf the shipping point?
A. What do you mean—what section?
Q. Just describe where the patronage of the wharf comes from.
A. Well, it comes from eight or ten miles through the country, from King & Queen and Essex—a scope of country I suppose about eight miles.
Q. What is the character of the settlement at Bowler's?
A. What settlement, do you *fean*—the people?
Q. Yes?
A. Well, there is no one there but me, at the place proper, and a merchant—a canner.
Q. How many stores are there at Bowler's?
A. One only.
Q. Have there not been other stores?
A. Only one for one year.
Q. Is there, or not, a post office?
A. Yes, sir.
Q. Look at that plat and say whether or not that is a correct representation of Bowler's Wharf, and the immediate situation around it? (Here hands witness paper marked "Exhibit No. 6.")
A. Yes, I suppose that is about as good a diagram of it as can be gotten.
Q. Please state whether or not there is a post office at Bowler's?
A. Yes, sir; I stated there was one there.
Q. Where is that post office kept?
A. Kept in my store, sir.
167 Q. Please state whether or not your store is shown on the plat?
A. Yes, sir; it is.
Q. Please state how the post office at Bowler's is served?
A. Why, it is kept open from sun to sun.
Q. I mean how does it get the mail?
A. It is delivered from the delivery—there is a rural delivery there.
Q. How does the mail come to the office and go away?

A. I take it to the boat and bring it back, sir.
Q. By what route do you take it to the boat?
A. Take it in my hands when I go out on the wharf.
Q. You speak of a canning factory; is there or not a canning factory at Bowler's Wharf?
A. There is.
Q. Is or not Bowler's Wharf the general shipping place of the merchants at Santa Cross?
A. It is.
Q. Is, or is not, Bowler's the usual shipping place of merchants at Ino?
A. It is.
Q. Please state approximately *and* population of Santa Cross, with the surroundings there?
A. I should say about fifty, sir.
Q. Please state as near as you can the population of the country within a radius of a mile of Santa Cross?
A. Well, it is very thinly settled; it would be hard to get at. I would not know how to answer that question.
Q. What county is Santa Cross in?
A. Essex.
Q. What county is Bowler's in?
A. Essex.
Q. Is or is not Santa Cross a voting precinct?
A. It is.
Q. Please state as near as you can the registered vote at Santa Cross prior to the new Constitution?
A. You have got me now, Mr. Carter. I have no more idea than the man in the moon. I have known what it was, but I can not tell you now to save my life what it is.
Q. How many stores are kept at Santa Cross?
A. Two.
Q. How many stores were kept at Santa Cross two or three years ago?
— There were three there for about six months, but there have only been two main stores there for two or three years.
Q. What are the industries, if any, that are carried on at Santa Cross?
A. Well, there is a blacksmith shop there, I believe; that is about all.
Q. Is there not a boat builder, having a place of business at Santa Cross?
A. No, sir.
Q. Was there not such an establishment there within the past three years?
A. There has not been in the past five years. The boat builder has been away from there about five years. Wright, you had reference to?
168 Q. I don't recollect his name; he was there the last time I was there, and that has been less than five years. He was a deaf fellow?

A. Oh, Woodland.

Q. Yes?

A. He's not a boat builder; I never knew of his building a boat; he ran a shop there.

Q. Please state where the supply for the canning factory at Bowler's is drawn from?

A. Well, the bulk of it is drawn from above Wyatt's Wharf—around the neighborhood of Wyatt's Wharf, above and below.

Q. Please state whether or not oyster boats make Bowler's their headquarters in the season?

A. We have about 60 boats that make Bowler's landing their headquarters during the most of the season.

Q. Please state whether or not the pier-head at Bowler's is in the navigable waters of the Rappahannock River?

A. I should say it was navigable water, yes, sir.

Q. Please state what structures, if any, are on or adjoining the pier-head at Bowler's?

A. Hunt & Garrett have an oyster house there attached to the wharf.

Q. Are there or not any other structures on the pier-head?

A. None that I know of.

Q. Is there not a warehouse for freight on the pier-head at Bowler's?

A. Yes, sir.

Q. Please state whether or not Garrett & Hunt buy and sell oysters at their establishment which you say is at the pier-head?

A. They do.

Q. Please state under what authority Bowler's Wharf was originally built?

A. We had a permit—I suppose the wharf originally belonged to Colonel Farinholt. It was sold to his brother, W. H. Fairnholt and a storm swept it away and my father then bought it from W. H. Farinholt. They, as I understood it, *has* a permit to build it there, from the legislature. I don't know whether the records show it or not, but I have always understood it that way.

Q. Please state whether or not the original wharf was built under an order of the County Court, permitting the erection of a wharf at the public landing at Bowler's?

A. The wharf that is there now—that I rebuilt.

Q. The original wharf at Bowler's; that is the wharf I understood had been swept away and rebuilt?

A. Once or twice, yes; it has been kept up from time to time; that is done under the same permit, I suppose.

Q. Please state whether or not you have an agent or wharfinger to attend to the wharf?

A. I am the agent there.

169 Q. Please state whether you always attend to the wharf, or whether you have employees to act for you?

A. My brother and myself generally always attend to it.

Q. What is your brother's name?

A. Milton Neal.

Q. Is that his full name?
A. Milton Mercer Neal.
Q. Please state whether or not you have received any compensation for the use of the wharf?
A. I have, sir, from the People's Steamboat Company.
Q. Please state whether or not you have received any compensation for the use of the wharf from any other parties?
A. I have not, no, sir, except the Weems Steamboat Company.

By Judge EMBREY:

Q. Who runs this oyster business on the pier?
A. Garrett & Hunt.
Q. Do they own that house, or you?
A. They own it.
Q. Do they pay you any wharfage?
A. No, sir.
Q. Do you derive any revenue from their being — at all?
A. Well, from the freight that is shipped from there—the oysters shipped from there over the Weems Line.
Q. Is that the only revenue you derive from their being there?
A. Yes, sir.
Q. Do you or not charge any oyster vessels that come there?
A. We have no oyster vessels come there.
Q. Do any water craft come there—bringing in oysters?
A. No, sir, only small oyster boats that land aside of their house there—that only get two or three bushels a day.
Q. Do they pay any wharfage for that privilege?
A. Well, they are not along side of my wharf, but of their house.
Q. Do you know as a matter of fact whether the oyster men pay anything?
A. I don't think they pay anything at all.
Q. Have you ever at any time received any compensation from any kind or character of water craft using your pier or wharf, except the Weems Steamboat Company and the Tourist?
A. I have not, no, sir.
Q. Do you know as a fact that your guardian did not?
A. I do, sir.

170 Redirect examination.

By Mr. WILLIAMS:

Q. When did you receive any money from the Tourist as wharfage?
A. About three weeks ago, I think, sir. They sent me a check—I don't know how much it was.
Q. Did you receipt for it or send it back?
A. No; I kept the check; of course that was equal to receipting for it.
Q. Did you cash it?
A. Yes, sir.
Q. How much have you received from the Tourist for wharfage, do you suppose?

A. From $7.00 to $10.00; somewhere in that neighborhood—not over ten.

Q. Does the Tourist Line land at Bowler's Wharf with your consent, or not?

A. Not with my consent; I have never authorized it.

Q. Have you ever protested against their landing there, or shown your disapproval?

A. I did protest, yes, sir, when she first started.

Q. To whom did you protest?

A. To the officers of the boat.

By the SPECIAL MASTER:

Q. Has this wharf always been known as Bowler's?

A. Yes, sir.

Q. Do you know when the first wharf was built there?

A. No, sir, I do not; it was not in my day.

Q. Has the wharf as to its dimensions been changed, to your knowledge, when it was rebuilt?

A. No, I think it stands about the same as it always has.

And further this deponent saith not.

R. G. NEAL.

NOTE.—By agreement between the parties by counsel, signature of the witness is waived.

J. T. WHEALTON, another witness introduced on behalf of the Plaintiff, being first duly sworn, testified as follows:

By Mr. WILLIAMS:

Q. State your name and residence?

A. J. H. Whealton; Whealton, Va.

Q. What County is that in?

A. Lancaster.

171 Q. Are you President of the Whealton Packing Company?

A. Yes, sir.

Q. Will you look at this paper which is marked Exhibit "L" and filed with the plaintiff's bill, and say whether or not you signed that paper? (Here hands witness "Exhibit No. 7.")

A. I did.

Q. Does your Company own Whealton's Wharf?

A. They do.

Q. Where did they get the title from?

A. Well, I believe that I got a permit from the legislature to build it first, and after that time, I suppose in a few years, four or five, the Company then owned it—I sold it to the Whealton Packing Company.

Q. When did you get a permit from the legislature to build Whealton's Wharf?

A. I don't know exactly the time; it has been 12 or 14 years ago; I got it before I built the wharf.

Q. Do you own the land fronting on the Rappahannock River on which Whealton's wharf abuts, when you built the wharf?

—. ——.

Q. How much frontage did you own on the Rappahannock River when that wharf was built?

A. Two or three miles.

Q. And the wharf was built on that shore?

A. Yes, sir.

Q. What was the wharf built for?

A. It was built for shipping purposes; to ship freight of different kinds.

Q. For what boats was it built?

A. At that time for the Weems Steamboat Company, I believe.

Q. Who advanced money to build the wharf?

A. Well, Mr. Williams advanced about one-half of it at the time, I think about that.

Q. Was or was not the Weems Steamboat Company to have exclusive use of the wharf at that time?

A. Yes, sir.

Q. Have you ever received wharfage from any boats except the Weems Steamboat Company, for using Whealton Wharf?

A. I have from the Tourist—or People's Steamboat Company.

Q. From any other?

A. No, sir.

Q. Will you look at this map or plat and say whether or not it — approximately correct? (Here hands witness paper marked "Exhibit No. 8.")

A. It looks about the way the wharf ought to lie; the buildings don't appear here altogether as they are.

Q. State in what particulars it is wrong?

A. Well, the Whealton Packing Company's oyster house that leads over there, is not there at all; and I believe Glenn's oyster house is not marked on here. This is at the pier head.

Q. How long did you own the land on which Whealton's Wharf was built, before you deeded it to the Whealton Packing Company?

172 A. About ten,—well, the land I had sold around the wharf there the Whealton Packing Company don't own at the wharf now, just above the wharf a little ways they own.

Q. When did you get title to that Whealton property—the farm upon which the wharf is built?

A. I suppose about fifteen years ago.

Q. And after you got the Whealton farm you went to the legislature and got a permit to build the wharf?

A. Yes, sir.

Q. And after that you built your wharf?

A. Yes, sir, a few years after that; I think may be three years—two or three.

Q. And in 1900 you deeded the wharf to the Whealton Packing Co.?

A. About that.

Q. How long has the wharf been in existence?

A. I think between twelve and fourteen years; I don't know exactly the date; something like that.
Q. Does the Whealton Packing Company pay taxes on that wharf?
A. Yes, sir.
Q. Does it keep it in repair?
A. Yes, sir.

Cross-examination.

By Mr. CARTER:

Q. You stated that Mr. Williams, of the Weems Steamboat Company advanced a part of the money necessary to originally build that wharf?
A. Yes, sir.
Q. Please state whether or not you have repaid that?
A. Oh, yes, I repaid it sometime ago.
Q. You have also stated that you bought a farm fronting for some distance on the Rappahannock River, and have since sold property in immediate proximity to the shore end of the wharf. Please state the character of the use to which the property around the shore end of the wharf is now put?

Counsel for Plaintiff object to this question as immaterial and irrelevant; and object to the answer for the same reason.

A. When I sold this property I reserved the water privileges. I sold it to George W. Taylor, and I reserved the privilege so that no other wharf could be built there.
Q. Please state whether or not there is now a considerable village at Whealton's?
A. Well, there is.
Q. Please state whether or not the roadway shown South 35 west on the plat represents a street or roadway in the village of Whealton?
A. Yes, sir, it represents a road or street, whichever you may call it.
173 Q. Please state whether or not that roadway or street has been dedicated to public use?
A. Yes, sir, I give it for a public road at the time; I gave the right of way to the county for public use.

Counsel for plaintiff excepts to the foregoing question and answer, because dedication can not be proved by parol testimony; and further, because the character of the road must be proved by the records, and not by oral testimony.

Q. Does this street or roadway pass through property which formerly belonged to you on both sides of it?
A. Yes, sir.
Q. Did you or not in selling the property on both sides of this roadway, reserve by the deeds this road, or sell with reference to the road?

Counsel for plaintiff objects to this question on the ground that the deeds themselves are the proper evidence of the terms thereof.

A. Well, the road was laid off as a public road, and of course, I sold wherever the surveyor carried his chain—from—I disremember now—I think from the middle of the road.

Counsel for plaintiff excepts to this answer; because the character of the road must be shown by the records, and because it is not responsive to the question.

Q. Please state whither this road leads?

A. Well, it leads out to Litwalton, where the road forks—where it strikes the main road and goes in different directions up the county, down the county; also across.

Q. Have you or not a post office at Whealton's?

A. Yes, sir, we have a post office.

Q. Please state how the United States mail is brought to and carried from that office?

A. The Weems Steamboat Company brings it by water, and then we have a land mail up the country.

Q. Please state whether or not the mail which comes to the Whealton Post Office by land, comes over the road shown on the plat?

A. Yes, sir, it comes over this road.

Q. Please state whether or not the public generally use this road in coming to and going away from Whealton's wharf?

A. Yes, sir.

Q. Please state whether or not the parties who have places of business adjoining the pier head at Whealton's, have free
174 access to and from the shore over the pier?

A. Yes, sir; I let them build these houses here with the understanding that they were not to interfere in any way with vessels to come there and that would take the freight from the wharf. That is the only way I got the pay for these houses; I let them build them free, and I did not allow them to get freight in any other way. If they did of course I would charge them for having these houses there; and I gave them the exclusive right in that way.

Q. Then you derived a revenue—or the Whealton Packing Company derived a revenue, from the freight contributed to the business of the wharf by the business carried on in these oyster houses?

A. Yes, sir.

Q. Do I or not understand you to say that the parties who carry on business in these structures adjacent to your pier head, have free access to and from the shore over the wharf, for themselves and their employees?

A. Yes, sir.

Q. Please state whether or not the pier head is in navigable water of the Rappahannock river?

A. Yes, sir, I suppose it is; of course it is not in the deepest of it.

Q. Please state how far in the river beyond average low water mark, the pier head is located?

A. I suppose the average low water mark is about at the shore; still I have seen it out to the pier head; the wharf is about 650 yards long, and the average low water is about at the shore; the

water is very shallow, but at extraordinary low water I have seen it pretty well out to the pier head.

Q. Have you or not ever seen the outside of the pier head on bare bottom?

A. No, sir.

Q. Please state the extent of country for which Whealton is the usual shipping point?

A. I suppose just the little villages——

Q. Yes—and how far back?

A. It is right hard to tell; some may be—I guess about six or seven miles is about as far as it would draw from.

Q. Have you any idea of the population embraced in that area?

A. Well, no, sir, I don't think I could tell. We adjoin Richmond County, you know; we are right on the line, and we get a good part of our freight from Richmond county. Litwalton is our voting precinct, and I think there are some 225 or 230 voters at Litwalton precinct.

Q. Is or is not the character of the traffic carried on by the patrons of the wharf the shipping and receiving of general merchandise?

A. Yes, sir.

175 Redirect examination.

By Mr. WILLIAMS:

Q. Did you ever receive wharfage from any boats besides the Weems Steamboat Company's boats?

A. Nothing except the People's Steamboat Company.

Q. When did you receive wharfage from that?

A. I think two or three different times.

Q. Have you received any since the recent lease made to the Weems Steamboat Company?

A. Yes, sir.

Q. Did you ever protest against their stopping there, or was anything said by you about the Weems Steamboat Company's lease?

A. No, sir, I don't think I did.

Q. Did you not tell Mr. Archer that you had an agreement with the Weems Steamboat Company?

A. Yes, sir, I told him; I was asking him about stopping there and I told him that I did not know that I could give him any privilege to stop there, as I had a lease with the Weems Steamboat Company, and I think he said it did not make any difference about that; that he would stop anyhow.

Q. Have any sail vessels stopped at Whealton wharf and paid wharfage?

A. No, sir; have not paid any wharfage.

Q. Have they ever landed there?

A. They have landed possibly fertilizer for some patrons of the wharf, and I never charged them anything.

Q. Did they do that frequently or not?

A. No, sir, not very frequently.

By the SPECIAL MASTER:

Q. Was there any landing or road leading to the river before Whealton's wharf was built?

A. No, sir.

Q. From what wharf did you ship before you built your own house?

A. Monaskon mostly, and Cape Charles; I shipped from anywhere at that time.

Q. What was the character of the compensation that you received from steamers landing at the wharf?

A. Well, we got ten per cent. of the business—that was understood, I believe, with the Weems Steamboat Company—ten per cent. of the business that was done. I think that is the way I understood it.

Q. That included passengers, did it?

A. Yes, sir, I think so; all the business.

176 Recross-examination.

By Mr. CARTER:

Q. You have stated that before the wharf was built you shipped from Monaskon on occasions. Please state whether or not there is any other wharf at or near Whealton's?

A. Well, I did ship from Waterview; I took my freight down in boats—and also from Bayport. I was right on the water, and I would take them whenever the wind was fair. They were the nearest wharves, and are now, I believe.

Q. How far is it from the landing at Whealton to Waterview, and how far to Bayport?

A. I guess it is three or three and a half miles to Bayport, and may be four to the other two, something like that—to Waterview and Monaskon.

Q. And there is no other wharf facility?

A. No, sir.

And further this deponent saith not.

J. H. WHEALTON.

NOTE.—By agreement of parties, by counsel, signature of the witness is waived.

T. D. MARKS, another witness introduced on behalf of the plaintiff, being first duly sworn, deposes as follows:

By Mr. CARTER:

Q. Kindly state your name and residence?

A. T. D. Marks; Naylor's; Richmond County, Virginia.

Q. How long have you lived at Naylor's?

A. I have been there about thirty years—28 years, I guess.

Q. During that whole time how far have you lived from Naylor's wharf-

A. Part of the time about 150 yards, and now I live within fifty yards of it.

Q. Do you own Naylor's wharf?

A. Yes, sir.

Counsel for defendant except to this question and answer, as record of evidence should be produced.

Q. Will you look at that paper marked "Exhibit H" and filed with the plaintiff's bill, and say whether or not you and your wife signed the same? (here hands witness paper marked "Exhibit No. 9."

A. Yes, sir.

Q. How long have you owned Naylor's Hole?

A. About twelve or thirteen years.

Q. Who did you purchase it from?

A. From the heirs of John R. Peed, my wife's father.

177 Q. The place is mortgaged now, is it not?

A. Yes, sir.

Q. What frontage on the Rappahannock river did that place have?

A. I suppose a mile and a half.

Q. And the wharf is built on that front, is it not?

A. Yes, sir.

Q. How many heirs did John R. Peed have?

A. Five.

Q. Do I understand you that you and your wife bought Naylor's property from them?

A. Yes, sir. There were four besides my wife; she was the fifth.

Cross-examination.

By Mr. CARTER:

Q. Do you or not derive a revenue from Naylor's wharf?

A. Yes, sir.

Q. Well, in what way?

A. Well, I get 10% wharfage on everything that goes over the wharf.

Q. Is that your usual and regular custom?

A. Yes, sir.

Q. Please state from whom you have lately received wharfage?

A. Well, I have received some this year from Mr. Williams, and I have also received some from the People's Steamboat Line.

Q. Do or not sailing vessels land at your wharf?

A. Yes, sir.

Q. Do you or not collect wharfage from them?

A. I have never collected anything from the vessel, though I have collected from the parties who shipped the stuff. Mr. Wellington shipped some can goods and also received some cases.

Q. So it was your custom, as you state, to collect wharfage in one way or the other on all merchandise passing over your wharf in and out?

A. Yes, sir.

Q. Please state whether or not the pier head at Naylor's is in the navigable waters of the Rappahannock river?

A. I think so; there is about ten feet of water at the outside.

Q. Please look at the plat now handed you and say whether or not it is a correct diagram of the situation about Naylor's wharf? (here hands witness paper marked "Exhibit No. 10."

A. I think so, sir. It don't show any house on the wharf, or anything around the place at all except the pier head. I have two houses on the wharf, and Mr. Wellington has a house adjoining the wharf—there is a gang-way from his house to the wharf—where he puts in his canned goods and takes off his cases.

178 Q. Please state whether or not the general public through the country adjacent to Naylor's, use the wharf as their shipping point?

A. Yes, sir.

Q. Please state whether the road shown on the plat leads from the wharf?

A. There are two roads—the road forks about 200 yards from my wharf; one goes to Warsaw and the other goes up to the other section of the country—Newlands—up towards that way.

Q. Please state whether or not the space around the shore end of the wharf is in constant use, from time to time, by the public, who go to the wharf to ship and receive their merchandise?

A. It is not constantly—it is not all the time. On boat mornings they came down, but where the road prongs, from that prong to the wharf it is a private road; that is my own land and my own road—I have the right to put a fence across there, or not.

Q. Is there or not an obstruction on what you claim to be a private road?

A. No, sir, no obstruction.

Q. Then any one can come to the wharf who will?

A. Yes, sir.

Q. What is the character of the merchandise shipped and received at that wharf?

A. Chickens, eggs, ducks, geese, peaches, apples, blackberries, and everything like that—calves, sheep, and so on.

Q. The general products of the country?

A. Yes, sir.

Q. Is it or not a fact that the shipments in are the general supplies in use throughout the country?

A. Yes, sir.

Q. Is there or not a post office at Naylor's?

A. Yes, sir.

Q. Please state where the post office is kept?

A. In my store.

Q. Is or not the location of your store shown on the plat?

A. No, sir.

Q. Please state whether or not there is any other business than your store located in the immediate proximity to the shore end of the wharf?

A. There is a canning factory on the other side of the road from my house and store.

Q. Please state to whom the canning factory belongs?

A. I leased the land to Wallington & Home; the house is mine at the expiration of the lease.

Q. They operate it?

A. Yes, sir.

Q. Please state from whence they draw their supply of vegetables?

A. Well, they get some from my side of the river—Richmond County—and some from Essex.

Q. Please state whether or not that portion of the supplies of vegatables obtained on your side of the river is hauled to the canning factory over the same road that is shown on the plat, leading to the wharf?

179 A. Well, part of it is, and part ain't. There is a by-road that goes around to the factory that turns off I suppose about 50 yards from the factory. The road goes right down to the wharf.

Q. Please state how the post office at Naylor's gets its mail, and sends it out?

A. By the Weems Line of steamers.

Q. Is or not the mail transported from the steamers over the wharf, to your store?

A. Yes, sir.

Q. Is or not the road shown on the plat a part of the road between the post office and the county seat of Richmond county?

A. That is a private road—not a public road—but that is a part of the road to the county seat, yes, sir.

Q. Please state approximately how often you have received wharfage from the People's Steamboat Company?

A. I have received it four times—twice last year and twice this year. The amount last year I don't think was as much as two dollars. This year it has been $31.12.

Q. Is or not the pier head at Naylor's beyond low water mark?

A. Oh, yes, sir.

Q. Are there or not buildings on the pier head?

A. I have two warehouses on my wharf, and Mr. Wallington has one—or very near; it adjoins it, because there is a gangway to it where he puts his canned goods in.

Redirect examination.

By Mr. WILLIAMS:

Q. Where is the store-house in which the post office is kept?

A. From the wharf—it is to the left about 50 yards, I suppose, from the foot of the wharf.

Q. Did you cash the checks which you received from the People's Steamboat Company?

A. Yes, sir.

Q. Did you ever protest to the People's Steamboat Company, or its officers, about using your wharf?

A. Mr. Archer, the first trip he came up there, told me he would

like to do some business with me. I told him, well, I don't know, Mr. Williams and I have always been very good friends, and I do not care to encourage any other line to come in and interfere. He said, well, he would show me that he would be a gentleman, or something like that. That is all that was said.

Q. Do you remember some years ago a steamer made a few trips on the river, named the "Lady of the Lake"?

A. I do.

Q. How long ago was that?

A. I think it has been about twelve years ago, nearly. Ten or twelve years ago; I don't know how long. I never kept any account of the date of it. I know she did not pay me anything.

180 Q. Did you not chase her away from there with a shot gun?

A. Well, I told them not to come there any more; they say I chased them away with a shot gun.

Q. How often did sail vessels land there at your wharf?

A. Oh, I could not say; I suppose two or three in the fall when Mr. Wallington shipped his canned goods, and one or two during the year—not very often.

Q. Were they always consigned to Wallington & Holmes?

A. No, sir; I have shipped some wood over the wharf myself; and other people have shipped some lumber, and I have shipped some lumber.

Q. But the traffic of the wharf was comparatively small?

A. Yes, sir, amounted to nothing, you might say, except Mr. Wallington's; he shipped a couple of vessels of canned goods every fall.

Q. How much wharfage do you get from sail vessels during the year, on the average?

A. I suppose twenty or twenty-five dollars.

By the SPECIAL MASTER:

Q. When was Naylor's built, do you remember?

A. I think it was built in 1894, if I make no mistake.

Q. Was it built by your father-in-law?

A. No, sir, I built it myself. Mrs. Fauntleroy owned the property then, and I leased it from her myself for five years, with the understanding that I would put a wharf there if she leased it to me for five years.

Q. That was the compensation then for the lease of the land?

A. Yes, sir; I put the wharf there and she gave me all I got out of it for five years. Then the property went back to her. Then my father-in-law bought it.

Q. Was there any other wharf there prior to that time?

A. Not in my recollection. There had been a wharf there years ago but not in my recollection. Some of the old piles were there—a good many of the old piles.

Q. It had gone out of use?

A. Yes, sir, it had not been used for several years.

Q. Do you know who built that wharf?

A. Old Dr. Fauntleroy.

Q. Did you seek or obtain permission from a court, or from the legislature to build that?

A. No, sir, I did not; I did not know it was necessary, and I do not know whether or not Mrs. Fauntleroy did. There was no objection raised.

Q. Is the wharf substantially the same to-day as it was when you built it, of course taking into account necessary repairs?

181 A. I rebuilt it once or twice. It is pretty near as good to-day as when it was originally built. It is brand new nearly.

Q. Will you give the dimensions of the pier head?

A. The pier head is 30 x 50, and the wharf is 70 yards long.

Q. And the cost?

A. It cost me between eight and nine hundred dollars when I first built it.

Q. Have you an agent at the wharf?

A. I am agent myself.

Q. Who puts the repairs on the wharf and who pays the taxes?

A. I do both.

Q. What was the original purpose of building the wharf?

A. I built it for the Weems Steamboat Company. I had no other use for it then when I built it, but for the Weems Steamboat Company.

Q. Were there any other wharf facilities at Naylor's?

A. No, sir.

Q. What is the nearest wharf across the river?

A. Tappahannock.

Q. How near is that?

A. I think about four miles.

Q. What is the nearest wharf above Naylor's?

A. Blandfield, about six miles.

Q. And what the nearest wharf below Naylor's?

A. Wellford's about fifteen miles.

And further this deponent saith not.

T. D. MARKS.

NOTE.—By agreement, signature waived.

S. SETTLE, JR., another witness introduced on behalf of the plaintiff, being first duly sworn, deposed as follows:

By Mr. WILLIAMS:

Q. State name, age, residence and occupation?

A. 32 years old; merchant; wharf agent Wellford's wharf, Richmond County Va.

Q. How long have you been agent at Wellford's wharf?

A. Six years last March.

Q. How long has the wharf been built?

A. Six years last March.

Q. Have you been agent since it was first built?

A. Yes, sir.

182 Q. Who are you employed by now?

A. Mr. Williams, of the Weems Steamboat Company.

Counsel for defendant except to this question and answer; the deeds being the best evidence of ownership.

Q. Who owns the wharf now?
A. The Weems Steamboat Company.
Q. Who owned it before then?
A. Mr. H. T. Douglas.
Q. Were you employed by him?
A. Yes, sir.
Q. Have sail vessels ever landed at Wellford's wharf, to your knowledge?
A. On one or two occasions they have.
Q. What stuff did they land there?
A. I have known them to land fertilizer; and they landed a few empty cans last year.
Q. Have you ever collected wharfage from vessels landing there since the Weems Steamboat Company has owned the property?
A. No, sir.
Q. What have been your instructions on that point?
A. I have not had any since the Weems Steamboat Company owned it.
Q. Will you look at this plat and see whether or not it approximately represents Wellford's wharf?
A. Yes, sir, I think that represents the wharf very well.

(The plat referred to is herewith filed as Exhibit No. 11.)

Q. On whose land is that wharf built?
A. Weems Steamboat Company's.
Q. Do they own land fronting on the Rappahannock river?
A. Yes, sir.
Q. And the wharf is built on that land, do I understand you to say?
A. Yes, sir.
Q. Did you ever protest to the People's Steamboat Company, or to the officers of the Tourist, against landing at Wellford's wharf?
A. I did when they first started.
Q. What did they say?
A. I told them I had instructions from Mr. Williams not to allow them to land there, and Mr. Archer said he was corresponding with Mr. Williams at that time.
Q. Have you ever received any wharfage from the People's Steamboat Company for landing at Wellford's wharf?
A. No, sir.

183 Cross-examination.

By Mr. CARTER:

Q. Was there a wharf at Wellford's prior to the structure there now?
A. Yes, sir.
Q. To whom did that belong?
A. It belonged to Mr. Wellford.

Q. Were you or not agent before the construction of the present wharf?

A. No, sir.

Q. You said something about Mr. Douglas having something to do with Wellford's wharf?

A. Mr. Douglas built the wharf and owned it up to the time Weems Steamboat Company bought it.

Q. Were you or not agent for Mr. Douglas?

A. Yes, sir.

Q. Did or not sail vessels land there while Mr. Douglas owned the wharf?

A. On one or two occasions.

Q. Did you not collect wharfage from sail vessels, under Mr. Douglas?

A. I collected wharfage twice.

Q. What was the extent of that wharfage?

A. I think once it amounted to about a dollar, and the other time 60 or 65 cents. I know once it was not as much as a dollar, and the time it was a few cents over a dollar.

Q. How do you know the land on which the present wharf abuts belongs to the Weems Steamboat Company?

A. I only know that Mr. Douglas showed me where his lines were, and he told me he sold it to the Weems Steamboat Company.

Q. You have pronounced as approximately correct, a plat handed you by Mr. Williams. I see upon that road a line marked "Road to Warsaw." Please state whither that road leads?

A. That leads to Warsaw.

Q. Is Warsaw a town?

A. Yes, sir, a small town.

Q. Is it or not the county seat of Richmond County?

A. Yes, sir.

Q. Is or not the road from the wharf to Warsaw a public road?

Counsel for plaintiff object to this question, because the character of the road—whether public or private—can not be proved by oral testimony.

A. From Mr. Williams' land there—from his land to Warsaw is a public road.

Q. Is there or not any permanent monument, structure or demarkation to call the attention of the casual passer-by, to the line which marks Mr. Williams' boundary?

A. No, sir.

Q. Is the road open from Mr. Williams' line to the wharf?

A. Yes, sir.

184 Q. Is or not the space around the shore end of the wharf in use, time to time, by the patrons of the wharf who go to receive and deliver freight?

A. Yes, sir.

Q. Is there or not a store house in close proximity to the shore end of the wharf and near the edge of the road leading from Mr. Williams' line to the wharf?

A. There is a storehouse on Mr. Williams' land, near the road.

Q. Is or not that storehouse the one in which you do business?
A. Yes, sir.
Q. Is there or not a post office kept in that store?
A. Yes, sir.
Q. Please state how this post office is served?
A. We receive mail from the Weems Steamboat Company, and have Star Route from Warsaw?
Q. Horse mail?
A. Yes, sir.
Q. Do or not the patrons of the wharf, the patrons of the post office kept in your store, and the public generally, go to the storehouse and to Wellford's wharf at their will?
A. Yes, sir.
Q. Please state the character of the shipments made over Wellford's wharf?
A. General products out and general merchandise in.
Q. Please state who are the owners and consignees of the goods shipped in and out over Wellford's wharf?
A. Well, the merchants of the community—Warsaw and the community.
Q. Is there or not any other wharf facility at or near Wellford's?
A. No, sir.
Q. What is the nearest wharf to Wellford's on the same side of the river, above?
A. Naylor's.
Q. What is the nearest wharf to Wellford's on the same side of the river, below?
A. Sharp's.
Q. How far is it from Wellford's to Sharp's?
A. I think they call it twelve miles by water—12 or 15.
Q. Is or not the pier head at Wellford's in the navigable waters of the Rappahannock river?
A. I reckon so.
Q. Are there or not any houses or buildings on the pier head?
A. Nothing but the warehouses.
Q. Is there or not a canning factory near to the shore end of Wellford's wharf?
A. Yes, sir.
Q. From whence does the canning factory get its supplies?
A. Gets it from the wharf; they got a lot of empty cans I believe from a vessel, that did not come over the wharf.
Q. How does the canning factory get its supply of vegetables?
A. From the community around—from the farmers close by.
Q. Do or not the customers that come to the wharf, the
185 store end of the post office, and the people who bring vegetables to the canning factory, travel the road shown on this plat?
A. Some of them do. There is another road, not shown there—a good many come that way.
Q. I understand you to say there is another road, not shown here?
A. Yes, sir, not a main road.

Q. Is or not the other road you speak of traveled by a considerable number of people coming to the canning factory?

A. Yes, sir, a good many haul fruit that way.

Q. You have *have* stated that the space around the store and the shore end of the wharf is open and unobstructed. Please state whether or not this plat correctly shows the terminus of the road at the wharf, and whether or not there is not a wider area trampled around, occupied and used by vehicles coming to the wharf to load and unload freight?

A. Yes, sir, they use both sides of the wharf, both sides of the road.

Q. Then in that particular I understand you to say this plat is inaccurate? You say they use both sides?

A. They use both sides: There is no particular road; they just drive anywheres around there; it is all Mr. Williams' land around there.

Q. Please state whether or not after coming within the boundary of Mr. Williams' land the public are accustomed to diverge from the road, either side, and to drive on either side of your store-house, and bring their vehicles to either side of the shore end of the bridge?

A. Yes, sir.

Q. Then, inasmuch as the plat shows the road going only to the upper corner of the wharf, is or not the plat inaccurate?

A. I think—that you see runs to the foot of the wharf—I think it is about accurate. I think that is the way it runs.

Q. Do or not wagons back up to the trackway at the end of the wharf?

A. Yes, sir.

Q. Do or do not wagons frequently stand on the side of the wharf down the river?

A. Yes, sir.

Q. Does or not the plat show the road only on the upper side of the wharf?

A. Yes, sir.

Q. Then, inasmuch as it fails to show the road both sides of the wharf, is or is not the plat inaccurate?

A. Well, as I stated, there is no road; you see it is all a sand beach. I think this plat is very near accurate.

Q. Please state whether or not there are any definite marks on the ground, corresponding to the yellow lines showing the edges of the road at the store, as shown by the plat?

A. Yes, sir, until we have a high tide, which sweeps over that and fills it up; of course the track, that is covered mostly. That is, I suppose to represent where they travel mostly.

186 Q. If there are a number of vehicles at the wharf at the same time, do some of them, or not, go on the lower side, or at the end of the bridge?

A. Yes, sir, they can go on either side of the wharf.

Redirect examination.

By Mr. WILLIAMS:

Q. You speak of Mr. Williams' land. What do you mean by that—the Weems Steamboat Company's land, or Mr. Williams'?
A. The Weems Steamboat Company's.
Q. What was Wellford's wharf built for?
A. *It was built for?* A. It was built for the steamboats' freight.
Q. What steamboats?
A. Weems Steamboat Company.

By the SPECIAL MASTER:

Q. I understand you to say that a Mr. Wellford had a wharf at this place prior to the one built by Mr. Douglas? Am I right?
A. Yes, sir.
Q. Was Mr. Wellford's wharf destroyed?
A. Yes.
Q. Do you know when that wharf was built?
A. I could not tell you exactly. I think it has been about fifteen years ago; I don't know exactly.
Q. Fifteen years ago, or fifteen years before the present wharf was built?
A. About fifteen years now, I reckon; I don't remember exactly.
Q. For what purpose was that wharf built, do you remember?
A. For the use of the Weems Steamboat Company—use of the steamers, for shipping.
Q. Do you know anything at all about the original Wellford's wharf?
A. I don't know anything of my own knowledge; I was not living there then. I just know what I have heard others say about it.
Q. What are the dimensions of the pier head at Wellford's wharf?
A. I could not tell you exactly; I suppose 30 x 40, something like that.
Q. What is the length of the wharf from the shore line?
A. About 350 yards, the wharf alone, I reckon.

And further this deponent saith not.

S. SETTLE, JR.

NOTE.—By agreement of parties by counsel, the signing of the foregoing deposition is waived.

187 The further taking of these depositions is here continued and adjourned until to-morrow (Wednesday) morning, August 5, 1903, at 10 o'clock, at the Court House.

E. M. LONG,
Special Master.

COURT HOUSE, FREDERICKSBURG, VA.,
WEDNESDAY, *August* 5, 1903.

The further taking of these depositions was resumed at 10 o'clock this morning, pursuant to adjournment—

Present: Mr. Fitzhugh, Mr. Williams, for the plaintiff; Mr. Carter, for the defendant.

V. W. C. SHARP, another witness introduced on behalf of plaintiff, being first duly sworn, deposed as follows:

By Mr. FITZHUGH:

Q. Please state whether or not you are the agent of the Weems Steamboat Company at Sharp's wharf; and if so, how long have you been agent there?

A. Ever since the wharf was established in 1870.

Q. Did you ever receive during this time any instructions from the Weems Steamboat Company as to the use of Sharp's wharf by other steamers or vessels than those of the Weems Line? If so, what?

A. Yes, sir, I always received instructions never to allow any vessel of any description to stop there without the consent of the owners.

Q. Without the consent of the owners of what?

A. Of the Weems Line, or of Mr. Williams, who represented it.

Q. Did you ever during the time you were agent at Sharp's wharf charge or receive any wharfage from any vessel or steamboat?

A. No, sir.

Q. Did or not the owners of the wharf during your agency there, ever in any manner hold out said wharf as a wharf to be used by the public, except for patronizing the Weems Line?

A. No, sir.

Counsel for defendant except to this question and answer, on the ground that the records show for what use Sharp's wharf was to be put; and it is not competent to contradict the records by the oral evidence of the witness.

188 Q. Was or not said Sharp's wharf treated as a private wharf during the whole of your agency at said wharf?

Counsel for defendant objects to the foregoing question for the same reasons as stated above, and also because the definition of "private wharf" is not contained in the question to the witness to enable him to answer intelligently.

A. Yes, as far as I know; I never heard anything to the contrary.

Q. As far as you know what?

A. That it was intended as a private wharf.

Counsel for defendant excepts to the foregoing answer for the same reasons as stated above.

Q. Please examine the paper now handed you, marked "Exhibit No. 12," which purports to be a diagram of Sharp's wharf, and state whether or not it is an accurate diagram of said property?

A. This diagram, the way it is made to look running south, don't

represent it. My property is represented here on the right; it should be on the left of the road, the way I am looking at it, if that is the way the diagram is intended to be looked at. The diagram is all right as far as the property is concerned, but it does not show as it ought to.

Q. You state that the diagram is all right, with what exception?

A. He has got my land on the right of the road instead of on the left; that is, if I am looking at the diagram correctly, running south.

Q. Please look at this bearing and state whether or not you can now say which is south and which is north on that map?

A. Yes, sir.

Q. Does or does not that map show that the wharf leading out into the stream is south?

A. Yes, sir, I see it now.

Q. Now, then, is or is not your property properly located on that map?

A. Yes, sir.

Q. Is that plat then a correct diagram or not, of Sharp's wharf?

A. As far as I can say by looking at it.

Q. Are you not familiar with the ground at Sharp's wharf?

A. Oh, yes.

Q. If you are familiar, why can not you say whether it is or is not a correct map?

A. Well, I say, as far as I can see, it is.

Q. Do you discover anything about the plat that is not correct?

A. No, sir.

NOTE.—Counsel for defendant decline cross-examination of the witness, and insist on the exceptions noted.

Signature waived by agreement.

189 H. H. OWENS, another witness introduced on behalf of plaintiff, and first duly sworn, deposed as follows:

By Mr. FITZHUGH:

Q. Are you the agent at Carter's wharf?

A. Yes, sir.

Q. How long have you been the agent there?

A. About two months, I guess.

Q. That all?

A. Yes, sir; that is, off and on you understand; I have been there regular that long, but I have been attending to it off and on for two or three years.

Q. I don't understand about that off and on; don't you have an agent there all the time?

A. Yes, of course; when I am not there we have an agent.

Q. Where is that agent?

A. He had T. J. Olive—he moved away; then there was a colored fellow——

Q. When did you become the regular permanent agent there?

A. I guess about six or eight weeks ago; six weeks possibly.

By Mr. FITZHUGH: This witness not having been the agent at Carter's for any time, is discharged.

By Mr. CARTER: The witness having been offered and sworn in behalf of the plaintiff, and questioned, defendant claims the right to cross-examine the witness as a witness for the plaintiff.

By Mr. FITZHUGH: The plaintiff declines to examine this witness, and therefore, he is not the witness of the plaintiff.

Cross-examination.

By Mr. CARTER:

Q. How long have you lived in the vicinity of Carter's wharf?

A. I was born within four miles of there and have been living there ever since; have been going there ever since I have been old enough to go anywhere.

Q. Have you or not been traveling the road which leads to Carter's wharf, and visiting the wharf, for many years?

A. All my life; ever since I have been big enough to travel.

Q. Has there or not been any obstruction, or question of the right of the public to travel the road to Carter's wharf, at their pleasure?

A. Not lately. I think fifteen or twenty years ago, or somewhere nearabouts there was. Mr. J. W. Carter and M. A. Carter had
190 a little difference on the public road, but they brought suit and made it a public road somewhere about fifteen years ago. I am not positive, but it has been all of fifteen years or somewhere therabouts.

Counsel for the plaintiff except to the answer of the witness in relation to the character of the road referred to; and also except to his testimony because he is examined under a claim by the defendant that he is the plaintiff's witness.

Q. You state that some fifteen or twenty years ago a controversy arose between M. A. Carter and J. W. Carter with reference to the road?

A. Yes, sir.

Q. Do I or not understand you to say that since that time the public have had free and undisturbed use of it?

A. Yes, sir, it is kept up by the public.

Counsel for the plaintiff except to this answer, because it is not competent for the witness to prove the character of the road as a public road; the same can only be proved by the record evidence required by law.

Q. Please state whether or not you have from time to time seen the county hands at work repairing the road from Carter's wharf?

A. Yes, sir, I have seen them.

Q. Please state whither the road from Carter's wharf leads?

A. Well, it leads to Westmoreland Court House, and of course thereon on; it leads to Warsaw, the county seat of Richmond County, and Westmoreland, the county seat of Westmoreland. And it leads to——

Q. Well, that is enough. Please state the character of shipments made and received over Carter's wharf, and to whom the merchandise belongs?

A. The merchandise?

Q. Yes, and produce?

A. Well, it belongs to the merchants in the vicinity; Carter Peed is one of the merchants; L. J. Peed; J. M. Skates; J. A. Skates, and W. H. Colts, those are the merchants. Of course there are others, farmers and so on.

Q. Then, I understand you to say that the inhabitants of the section of the country adjacent to Carter's wharf have it as their usual and regular point for shipping and receiving their goods?

A. Yes, sir, I do.

Q. Please state whether or not there is a post office at Carter's wharf, served by the United States mail?

A. Yes, sir, there is undoubtedly.

Q. Please state by what route or routes this post office gets and sends away its mail?

191 A. Well, it gets it from Fredericksburg and Baltimore, and of course all wharves anywhere down the river that there is mail directed to Carter's wharf and comes there, and anyone sending mail to Baltimore and Fredericksburg, most of them send it by Carter's wharf. All the consignments, or anything like that you know—all the shipments.

Q. Is there not a Star Route, or horse mail service, serving that office, as well as the boats?

A. No, sir; that is what we term the country mail—no, sir, there is not as I know.

Q. No mail cart?

A. No.

Q. Do or not the inhabitants of the country nearby receive their mail, and mail their letters at this office?

A. Well, most of them do, yes, sir; that is, some of them do, anyhow.

Q. Please state whether or not the pier head at Carter's wharf is in the navigable water of the Rappahannock river?

A. Well, that is something—of course all boats that have ever tried to make a landing there, did it. I don't know whether you would term that navigable water or not.

Q. Do you know of the depth of the water at the pier head?

A. No, sir, I do not definitely.

Q. Do or not steamers and other vessels readily land at the wharf?

A. All steamers that want to land there, land there.

Q. Is or not the pier head a considerable distance in the river below low water mark?

A. Well, it is some—I suppose as much as 15 or 18, or may be more feet—as much as 15 feet.

Q. Do you or not know whether wharfage or compensation for the use of the wharf is charged by the owners?

A. Yes, sir.

Redirect examination.

By Mr. FITZHUGH:

Q. Who has charged, within your knowledge, any wharfage at that wharf in the last six months?

A. You mean to say who received the pay for the wharf, or who has charge of the wharf?

Q. (Question repeated.)

A. The Tourist—of course the owner receives the wharfage, or percentage, of all boats that land there.

Q. (Question again repeated.)

A. I don't know that anyone has charged, but all the boats that make a landing there pay a percentage.

Q. You have stated that you have only been the agent there for the last two months. Of the boats that have landed there since you have been the agent, in the last two months, what ones have paid you wharfage?

A. The Tourist.

192 Q. Has any other boat but the Tourist paid you any wharfage since you have been agent there?

A. Not me—they have sent——

Q. (Question repeated.)

A. Not me personally, no, sir.

Q. Do you know of your own knowledge that the Tourist has paid any wharfage there to anybody in the last six months?

A. Yes, sir.

Q. State to whom the Tourist has paid wharfage in the last six months?

A. To Mrs. M. A. Carter; that is, it was sent to her enclosed in a letter.

Q. When was that done?

A. I could not rightly say.

Q. Has any other boat but the Tourist paid wharfage at that wharf, within your knowledge, in the last six months?

A. No, sir, unless they sent it to her in a check enclosed in a letter possibly.

Q. (Question repeated).

A. No, sir.

Q. Do you know of your own knowledge that any boat has ever paid wharfage at that wharf, except the Tourist?

A. For what length of time—within the last six months?

Q. No, sir, at any time?

A. No, sir, I do not; only what they tell me.

Q. Do you know on whose property Carter's wharf is?

A. It is M. A. Carter's heirs—I suppose Miss Eva Carter's land.

Q. I wish you would stop supposing?

A. Well, I know it is on Miss Eva Carte's land.

And further this deponent saith not.

Signature waived by agreement.

R. L. WARE, another witness introduced on behalf of plaintiff, being first duly sworn, deposed as follows:

By Mr. FITZHUGH:

Q. Will you state whether or not you are the owner of Ware's wharf?
A. I am.
Q. What county is it in?
A. Essex County.
Q. Are you also the agent at that wharf.
A. I am.
Q. How long have you been agent at that wharf?
A. Since '73.
Q. When was that wharf built?
A. In the fall of '73.
Q. Did you build it?
A. Yes, sir.
Q. Has any navigation company had the control of that wharf since it was built in '73?
A. None, except the Weems Steamboat Company; but be-
193 fore that, another line had it—Captain Taylor was the man I made a bargain with about it. That was previous to the combination with the Weems Steamboat Company, I think.
Q. Was or was not the Weems Steamboat Company successor to Captain Taylor?
A. Yes, it was.
Q. Have or have not the Weems Steamboat Company and its predecessors, had the exclusive control of said wharf ever since it was built?
A. Yes, sir, so far as I could give it.
Q. Did you or not permit any other steamboat company to land at that wharf to take on or deliver freight or passengers?
A. No, sir, not with my consent.
Q. Did ever any steamboat company attempt to use that wharf, other than the Weems Steamboat Line and its predecessors, and of late, the Tourist?
A. Yes, sir, some years ago—I forget how many—probably twenty—there was a steamer here called the "Eliza Hancock," and another one the "Lady of the Lake;" one of them stopped several weeks, but did not pay me anything.
Q. Did they stop with your consent, or not?
A. No, sir. I referred the matter to Mr. Taylor, with whom I made the bargain. They stopped though.
Q. You say one stopped for several weeks. How long the other?
A. I think the "Lady of the Lake" stayed on a very short time. The "Eliza Hancock" probably—I don't know—for two months.
Q. And you state that they did not stop with your consent, and that no wharfage was collected from them?
A. I charged up—at least I kept a copy of the manifest of the freight, expecting to get something, but I didn't get it.

Q. Who did you expect to get wharfage from them, if the Weems Line had the exclusive use of the wharf—or Captain Taylor?

A. Because Captain Taylor told me to keep an account of what went off and what was received.

Q. Please examine the paper now handed you marked "Exhibit No. 13," which purports to be a diagram of Ware's wharf, and state whether or not it is an accurate diagram of said property?

A. Yes, sir, I think it is.

Q. How much of your land where the wharf is built fronts on the Rappahannock river?

A. The whole farm, you mean?

Q. Yes.

A. It is about a mile and a thousand yards.

Q. Are you the fee simple owner of the land where the wharf is built?

A. I am.

Q. Is or is not the wharf built at about the center of your river frontage?

A. It is not.

Q. About where is it located on your river frontage?

A. It is on the lower end of the farm—the farm is a peninsula, and the wharf is on the lower end of it.

194 Q. Please state whether or not you acquired this property where the wharf is built, under the will of your father?

A. I did.

Q. Please examine the paper now handed you marked Exhibit No. 14, which purports to be a lease from you dated the 21st of January, 1903, leasing to the Weems Steamboat Company Ware's wharf, and state whether or not said lease was executed by you?

A. Yes, sir, that is my signature.

Cross-examination.

By Mr. CARTER:

Q. The deed, or the lease, which you have just filed as Exhibit No. 14 with your deposition, states that for valuable consideration the said Robert L. Ware doth lease for the period of one year, to the said Weems Steamboat Company, of Baltimore City, the wharf known as Ware's wharf; and so on. Please state what is the actual consideration for that lease?

A. They have exclusive use of the wharf, so far as I can give it to them, for ten per cent. on freight and passengers.

Q. Please state whether or not sail vessels have made use of Ware's wharf, from time to time, in the past?

A. They have.

Q. Please state what wharfage you have been accustomed to charge them for the use of the wharf?

A. I charge 25 cents per ton on coal; the same on wood; the same on lumber; and fertilizer, or fish guano, which the steamboats would not bring, they paid me 25 cents per ton; a good many vessels that load there I don't charge anything. There is a vessel there now loading water melons.

Q. Please state to whom was consigned the coal, fish guano and other articles of commerce which you stated were shipped in over your wharf by sailing vessels?

A. The fertilizer was shipped to farmers in the neighborhood, and the coal to citizens of Dunsville mostly, and to some few near the wharf.

Q. Where is Dunsville?

A. It is two and a half miles, right off in the country; it is a village—a post office—small town—village they call it.

Q. How many stores are located in Dunsville?

A. About four in the town or village.

Q. Any other establishments there, of a business nature?

A. There is a coach establishment, and canning factory—I believe that is about all.

Q. Is or not Ware's wharf the regular shipping point for the town of Dunsville and the surrounding country?

A. It is.

195 Q. Have, or not, the public at all times had access to Ware's wharf since it was built, for the purpose of shipping or receiving their goods?

A. They have.

Q. Please state whether or not there is more than one road leading from the country back of Ware's, out to the wharf?

A. Yes, sir, we have two roads leading down to the wharf; but there are really five roads on the farm that lead to the wharf that are used by the public; but there are two regular roads, one leading down to Ozina and the other to Dunsville.

Q. Does or not the road leading to Ozina traverse the lands of E. M. Ware?

A. It does.

Q. Was or not that road opened by Judge Ware, at your request?

Counsel for plaintiff except to this question as not competent to prove by other than the records of the court, whether the county opened a road at the point designated.

A. It was. That is a private road; not a public road.

Q. (Question repeated.)

A. Yes, I think that was one of the inducements that led me to build the wharf there, that he would let persons some through his farm to get to the wharf. The public has the benefit of that road, but it is a private road and gated, and can be closed at any time.

Q. Please state how long the public has had free and uninterrupted use of that road for the purpose of coming to your wharf?

A. Ever since the wharf was built.

Q. Please state, approximately, the country—section of country for which your wharf is the regular shipping point?

A. Well, we ship from below, as far as Ozina, and then from King & Queen as far as Bestland; there are five merchants on that road that ship regularly.

Q. How far is it in miles from your wharf to Bestland?

A. I reckon it is mighty near 10 miles. We ship beyond Bestland very near to Providence.

Q. Please state whether or not the farmers of this section, as well as the merchants, make use of your wharf for shipping and receiving their goods?

A. They do.

Q. Please state whether or not there is any other wharf facility at Ware's, or in the immediate vicinity of Ware's, which could be used by the people of this large section of country with equal convenience?

A. No, sir, the nearest wharf above is Tappahannock, and the nearest wharf below is Bowler's.

Q. Please state whether or not you are familiar with the Rappahannock river for miles, and especially above and below your wharf?

A. Yes, sir, I am, I think. I know the river pretty well from Naylor's down.

196 Q. Please state whether or not there are numerous locations adapted, both on shore and with regard to the channel, for the construction of wharves between Tappahannock and Bowler's?

A. No, sir, there are not many landings suitable for a wharf. They could be built, but at great expense.

Q. Please state whether or not the pier head of your wharf is in the navigable waters of the Rappahannock river?

A. It is.

Q. Please state briefly and in outline, the character of your wharf structure?

A. It is built of spruce pine pilings, with cap-sills 10 feet apart; stringers on them, and then oak plank, and an iron track; pier head 40x80, I think.

Q. Please state whether or not there are warehouses and buildings on the pier head?

A. There are.

Q. Please state the uses to which these buildings are put?

A. Two of them are used for freight for the Weems Steamboat Company, and one of them as an oyster house.

Q. Please state who uses the oyster house?

A. It belongs to two of my boys.

Q. Please state whether or not they are engaged in the business of buying and shipping oysters?

A. They are, and planting.

Q. Please state whether or not there is a post office kept at Ware's wharf, and the name?

A. There is—Ware's wharf.

Q. Please state where the office is kept?

A. The mail is kept at my house, except on boat days and then it is carried down to the wharf and the letters are stamped and forwarded; the mail received is opened there for the convenience of customers and to save them the trouble of coming to my house and those not called for I carry up to the house.

Q. Do I understand that you have a suitable place arranged on the pier head, where you receive the mail and distribute it, on boat days?

A. Yes, sir, but still the mail is kept at my house; it is carried there for safe-keeping.

Q. I understand. While the mail is kept at your house for safety,

do you or not consider the post office as at the pier head where the patrons of the wharf get their mail?

A. No, sir, most of the mail is distributed to the neighborhood from my house. The mail is carried back there for those who don't come for it to the wharf. The mail is stamped down at the office at the warehouse.

Q. Is there or not a store in the neighborhood of your wharf?

A. There is a storehouse there, but no store at present.

Q. Please state whether or not the traffic over your wharf consists of the usual and general produce of the country, and
197 the ordinary and general supplies which are shipped in for the people?

A. Yes, sir.

Q. Please state whether or not you have any other assistant, or wharfinger to aid you in the conduct of the business?

A. My son attends to the business.

Q. What are his initials?

A. W. L.

Q. You have stated Mr. Ware, in answer to a question on your direct examination, that you kept an account and expected to receive wharfage from the steamers Liza Hancock and Lady of the Lake, which you said formerly plied the Rappahannock river and made use of your wharf. Please state at what rate you figured the wharfage with regard to those vessels?

A. I left that to Captain Taylor. He just asked me to keep a statement and he expected to bring a suit, or something of the kind, and I have the books at home now, with a record of the stuff.

Q. You stated in answer to another question on direct examination that Captain Taylor landed his boats at your wharf before the combination with the Weems line. Please state whether or not Captain Taylor and the Weems boats at any time ran the river together?

A. I think they did. I think the "Winona" and the "Matilda"—one belonging to Captain Taylor and the other to Captain Weems—it was a long time ago.

Q. Please state whether or not at the time both these boats were operated, they both made use of your wharf?

A. Yes, sir.

Q. Please state whether or not you charged wharfage on each?

A. Captain Taylor—he did not build the wharf—but I would not build it until he would agree to stop there; the boats then were very reluctant to stop at any extra wharves; the next wharf was Tappahannock, above, and Bowler's below.

Q. Then, do I understand you to say that it was with difficulty the boats were induced to take on new wharves?

A. I was afraid to build unless they would promise to stop there, and this was the only line I could rely on, and they agreed to stop.

Q. What was the percentage?

A. Ten per cent., same as I get now—10% on freight and passengers.

Q. Please state whether or not you have ever made any charge for wharfage on the People's Steamboat Line, for the use of their Steamer Tourist?

A. I have not.

Q. Please state whether or not you ever received wharfage from them?

A. I have not.

Q. Please state whether or not you ever received wharfage from them?

198 A. Before Christmas one morning William brought me an envelope which he said he had received and receipted for; of course I would back him up in anything he does, you know, and I said, all right, but you ought not to have taken it. He said he saw some other names in the list—some Neal's was there, and I knew his wharf was in the same fix as mine. After that they sent me another amount in an envelope, and I took that—that was up to the first of February; but since then I have not taken anything.

Q. Have or not the company remitted you?

A. They sent me a check sometime after the first of January, and I sent it on to Mr. Williams—didn't endorse it or anything—and he returned it to me; and about the first of July they sent me another one—both of which I have now. I was just waiting on Mr. Williams; it was his money as he had leased the wharf; and he returned it.

Q. Please state whether or not you have ever had a written lease of your wharf prior to the execution of the lease which you have identified and filed as an exhibit?

A. No, sir, no other lease with the Weems Steamboat Company; they just agreed to carry out the contract I made with Captain Taylor and under that agreement we have been working ever since; and the only lease was the one I read here to-day.

Q. Please state the nature of the services which you rendered to the Weems Line for the compensation of 10%, which you received as wharfage?

A. Well, I have had to keep the books, keep a copy of the manifest; take the lines; raise the lights at night—before they had these search lights—I don't have to do that now—and take care of the general interests of the company; take care of the freight left there, as far as I could; see that the freight was handled all right, and protect my own interests as well as theirs.

Q. You have stated that you are familiar with the river? Please state whether or not the duties you have enumerated are the usual duties of wharf agents along the Rappahannock?

A. I suppose they are.

Counsel for plaintiff except to this answer as supposition and not evidence.

WITNESS: We generally compare notes and consult with each other about conducting the business sometimes, and I suppose they are familiar; but I have never investigated it thoroughly; but I suppose they are similar.

Q. Please state whether or not you have consulted with your neighbors at the wharves above and below Ware's, and perhaps across the river, and give the result of the consultation as to the services to be

performed by the wharf agents for the compensation you have mentioned?

199 A. No, sir; I don't think I ever had any conversation on the subject. I don't recollect any. In the way of complaining, you mean, in conversation?

Q. No, sir; I mean—not in the way of complaining, but in the way of a business discussion as to what you did, and as to what Mr. Neal for instance did, or what the agent at any other wharf did, in reference to discharging the duties of a wharfinger?

A. I have no recollection of any such interview.

Q. I understood you to say something about Neal; that is why I asked the question.

A. I said my son had signed this receipt on the book, and had noticed Neal's name down there too.

Q. You have stated that there were five merchants who regularly shipped over your wharf, whose places of business were along the road towards Bestland, and that there were four stores in Dunsville. Please state whether or not there are several stores in the other direction towards Ozina, which also use your wharf?

A. No, sir, up above towards Howerton, that way.

Q. Are there or not stores on the road to Ozina and at Ozina?

A. I mentioned those—I included those in the five; there are two stores at Ozina and three beyond.

Q. On that road?

A. On that road, yes, sir.

Q. Please state whether or not your wharf is a shipping place in the fish season for quantities of fish taken in pound nets, fish traps and other fishing devices?

A. It is.

Q. Please state whether or not fish are frequently bought and sold on your wharf?

A. They are.

Q. Please state whether or not the fishermen come at will and pack and ship their fish from your pier head?

A. They do.

Q. Please state whether or not you get compensation from the Weems Line, by the 10% on the freight charged for the transportation of fish?

A. Yes, sir, they pay the same on that as they do on everything else, I suppose.

Redirect examination.

By Mr. Fitzhugh:

Q. Would you ever have built that wharf on your land if there had not been this Taylor's steamboat line plying between Baltimore and Fredericksburg?

A. I would not, sir.

Q. Did you not build that wharf for the purpose of furnishing facilities to that steamboat company, to receive and deliver freight?

163

A. That was not the only object; I wanted to benefit the neighborhood and myself too. It was a mutual benefit, I thought.

200 Q. We have heard a good deal said about two trades over that wharf. Is or is not the great bulk of the traffic over that wharf to the Weems Steamboat Line?

A. Oh, yes, I suppose 99%; that is, including vessel freight and all except lumber.

Q. So that all these stores and villages that we have heard of, they trade there because the Weems Line stops there?

A. I don't know, sir, about that.

Q. You have stated that all these stores obtain merchandise over your wharf, and that the farmers around ship their produce and obtain what they want over your wharf. Does or does not that traffic over your wharf come from the Weems Line principally?

A. Yes, as I said, 99% of it—except sail vessel freight.

Q. What about sail vessel freight?

A. Well, they carry such stuff as the Weems Line don't want generally.

Q. Do I understand that your arrangement with Captain Taylor, and from that time to the present with the Baltimore and Fredericksburg Line, has been that they have had exclusive control at your wharf, except for such traffic as these steamers do not want?

A. Yes, sir, so far as I could control it.

Q. You have spoken of Captain Taylor running a boat and Captain Weems running a boat. Do you know if those boats were not run in harmony?

A. Well, they had regular days; each one made a trip a week—one on Tuesday down and the other Saturday up.

Q. And both used your wharf in common, did they not?

A. Yes, sir, the bargain was made for both boats; if there was any competition I didn't know it.

Q. Do you pay taxes on that wharf property, and repair it?

A. I do.

Recross-examination.

By Mr. CARTER:

Q. You have stated in answer to a question on redirect examination, that you built the wharf because Mr. Taylor was operating a steamboat on the Rappahannock river. You have also stated that you built the wharf with the object in view of benefitting the neighborhood and profiting yourself. Please state whether or not you would just as readily have built the wharf had any other line been operating the river at that time?

A. If they would have complied with the terms I would.

Q. And what were the terms you asked for?

A. That they would stop there.

201 By the SPECIAL MASTER:

Q. Is this the original wharf built on your ground?

A. No, sir, the first wharf was carried away by ice.

Q. What I mean is, was there a wharf there before you erected the wharf in 1873?

A. It was the first wharf in that respect.

Q. Is the present wharf practically the same dimensions—length and so forth—as the original wharf?

A. Yes, sir.

Q. What is the average revenue per annum you receive?

A. From the Weems Steamboat Company?

Q. From all sources?

A. It varies with products and prices, very much; the higher the stuff is the more is shipped and the larger the freights the larger the receipts; but it runs around five hundred dollars—sometimes a little more; sometimes less.

Q. Will you state as near as you can recollect, what was the route of the steamers "Eliza Hancock" and "Lady of the Lake," and for what period each of them ran upon the river?

A. I think one ran longer than the other; I don't recollect whether it was the Eliza Hancock or the other one; but I think the Eliza Hancock ran longer than the Lady of the Lake. One ran to Washington and the other to Norfolk.

Q. What was the other terminus?

A. Fredericksburg.

Q. Do you know how long it was after the steamers of the Weems Company began to run on the river, before the consolidation was effected between them and Captain Taylor?

A. I think Captain Taylor had charge a very few years after I contracted with them; probably not over three or four years.

Q. Did you receive compensation from Captain Taylor as well as from the Weems Line?

A. No, sir, I just received one check from the two boats.

By Mr. FITZHUGH:

Q. Did I not understand you to say that when the Hancock and the Lady of the Lake stopped at your wharf, and you reported the fact to Mr. Taylor, that he announced his purpose to sue those two boats?

A. Yes, sir; and asked me to keep an account of the freight that went over, which I did. I have it now, I think.

Q. He never gave them any consent?

A. No, sir; at least he told me not to recognize them; but he could not help their landing, and I had to keep an account of the freight.

Q. He told you not to recognize them?

A. Yes, sir.

And further this deponent saith not.

R. L. WARE.

202 NOTE: By agreement of parties, by counsel, the signature of the witness is waived.

Witness was later re-called, and asked by

The SPECIAL MASTER:

Q. Have you ever applied for or obtained permission to build your wharf, other than the general permission accorded to all riparian owners?

A. I have not.

BAYARD WRIGHT, another witness introduced on behalf of the plaintiff, being first duly sworn, deposed as follows:

By Mr. FITZHUGH:

Q. Are you the agent of the Weems Steamboat Company at its wharf at Tappahannock?

A. Yes, sir.

Q. How long have you been agent there?

A. Two years.

Q. Have you since you have been at Tappahannock received any instructions from the Weems Steamboat Company, or Mr. Williams, its agent, as to what boats might stop there, other than the Weems Line?

A. Yes, sir, he told me not to let the Steamer Tourist land there.

Q. Did he give you any instructions as to any other boats than the steamer Tourist?

A. No, sir.

Q. Never had any instructions from him as to whether other boats might land there, without his consent?

A. No, sir, he told my brother not to allow any freight to be carried off the wharf by vessels.

Counsel for defendant objects to this answer, as witness has not shown his means of knowledge of what instructions were given by Mr. Williams to any party except himself. Excepts to so much of the answer as states what Mr. Williams stated to witness' brother.

Q. What is the name of your brother to whom you have referred?

A. M. B. Wright.

Q. What connection has he with the wharf?

A. None now; he was agent before I took charge.

Q. How do you know that Mr. Williams gave him any instructions about not letting other boats land at the wharf?

A. I heard him say; he told me when I took charge that Mr. Williams told him not to allow any vessels to stop there without his permission.

203 Q. In the two years that you have been agent at that wharf, have you collected wharfage from any boat stopping at that wharf?

A. No, sir.

Q. Have you in those two years consented that any boat other than the Weems Line should stop at that wharf?

A. No, sir, except a vessel on excursions that would take a party out sailing at night; they would come in and get a crowd and go out.

Q. Pleasure boats?

A. Yes, sir.

Q. Please examine the paper now handed you, which purports to be a diagram of the Tappahannock wharf owned by the Weems Steamboat Company, and state whether or not said diagram is a correct representation of said wharf property? (here hands witness paper marked "Exhibit No. 15.")

A. Yes, sir, it is.

Q. State whether or not you warned the Tourist not to stop at the Weems Company's wharf at Tappahannock?

A. No, sir, I did not tell them.

Q. Why did you not tell them if you say you had instructions not to let them land there?

A. I did not think I could stop them, and that is the reason I did not tell them.

Q. Was it not your duty, under instructions from Mr. Williams, to notify them that he objected to their stopping there?

A. Yes, sir.

Q. Why did you not carry out his instructions then?

A. Well, I did not think I could stop them; that is the reason.

Cross-examination.

By Mr. CARTER:

Q. How old are you Bayard?

A. I was 17 the 25th of last November.

Q. How long have you lived in Tappahannock?

A. I was born there but lived in Baltimore about five years; I have lived there the rest of the time.

Q. How long have you lived there since your family moved back from Baltimore?

A. I think it has been about nine years, nine or ten years.

Q. Please state whether or not you are familiar with the town and its surroundings and know the inhabitants?

A. Yes, sir.

Q. Please give approximately the population of Tappahannock?

A. It is between four and five hundred; I have forgotten exactly.

Q. How many stores are in Tappahannock?

A. Nine.

Q. How many hotels?

A. Two.

204 Q. Is there not a post office in that place?

A. Yes, sir.

Q. How does the post office receive and send out its mail?

A. From the steamers and mail carts.

Q. How is the same transported from the office to the steamer?

A. By carrier.

Q. By what route does the carrier go usually?

A. From the post office to the steamboat?

Q. Yes.

A. Right down the Main street.

Q. You then go Main street all the way to the boat?

A. Yes, sir, they turn right around Mr. Williams' corner and go over the wharf.

Q. Please state whether or not there is a United States Custom House located in Tappahannock?

A. Yes, sir.

Q. You have stated that you are familiar with the town of Tappahannock and know the streets?

A. I don't know the names of them.

Q. What is the name of the street which goes to the river shore immediately below the wharf.

Counsel for plaintiff except to this question, because it does not appear that there is any street that comes to the river shore in Tappahannock. This witness can not know whether it comes to the shore, or where it stops.

A. That is Main street.

Q. What is the next street up the river from Main?

A. I have forgotten now what they call it.

Q. As one holds the plat which you have just looked at and filed as Exhibit No. 15, looking in the direction corresponding from the shore towards the center of the river, standing in Tappahannock, I see that the street below the wharf is marked Prince street, and the street above the wharf on the diagram is marked Main street. Are those streets correctly designated on the plat?

A. I think they call that street from the pickle factory above the wharf—I think they call that street Prince street. I think that is what it is; I am not sure; and they always call that street running down by Mr. Wynn's, Main street.

Q. Then is this plat correct in that particular?

A. Well, this map is right, but I have gotten the names of the streets mixed up.

Q. Then do I understand you to say that Main street is up the river from the steamboat wharf?

A. No, sir, Main street is below.

Q. Then have you the streets mixed up, or has the surveyor who made this plat got the streets mixed up?

A. Well, I cannot tell, because I have forgotten the names of the streets.

205 Q. You have stated that you have lived for the past nine years in Tappahannock; are familiar with the town and know its inhabitants. You have stated that there are nine stores, a post office and a custom house there, and some four or five hundred people. Do I understand you to say that you do not know which is Main street in Tappahannock?

A. Well, they call Main street facing the stores—that runs right down to the river shore; and that is the reason I call that Main street.

Q. Is that the street south of, or north of the wharf?

A. That is the street south of the wharf—Main street.

Q. Then are the names of the streets reversed upon this plat, or not?

A. Well, now, I could not tell that—I notice from Mrs. Latane's corner there—this is the street they call Main street that runs up by

the pickle factory on here. I have just got the names of the streets mixed up, that is all. In fact I have never known them.

Q. Do I understand you to say now that Main street is north of the wharf?

A. No, sir, it is south of the wharf.

Q. Is Main street on this plat shown north or south of the wharf?

A. It is shown north.

Q. Is that correctly shown on the plat?

A. It is shown north.

Q. Is it correctly shown on the plat?

A. If that is Main street it is.

Q. Have you not said that Main street is south of the wharf?

A. Yes, sir, that is what they call Main street, south of the wharf.

Q. Please state if you know, the owners of the property along the street south of the wharf, a section of which is shown on this plat?

A. Mr. Wynn.

Q. Do I understand you to say that Mr. Wynn owns all the property on both sides of Main street?

A. No, Mrs. Gresham owns a lot, and then there is a public road up and down Main street.

Q. Who owns the land on the south of Main street, and the last lot towards the river?

A. Mrs. Gresham, I think.

Q. You say Mrs. Gresham owns the lot in the angle of Main street and the river?

A. To the south of Main street.

Q. Which street do you designate as Main street, in your answer?

A. The one running by Mr. Carlton's, between Mr. Carlton's and Mr. Wynn's.

Q. Do you mean the street marked Main street on this plat, or the street marked Prince street on this plat?

A. Well, the regular name of Main street must be back there by the pickle factory; by this map it is; and Prince street is the front street, right between Mr. Wynn's and Mr. Carlton's.

206 Q. (Question repeated.)

A. It is marked Prince street on this map.

Q. Then you designate Main street the street marked Prince street on this map?

A. Yes, sir, that is what I designate.

Q. Is that the street called Main street by all the inhabitants of Tappahannock?

A. Well, they generally speak of it as Main street; I don't know its regular name.

Q. Please state whether or not the lots on each side of the streets in Tappahannock are fenced?

A. Mr. Wynn's is fenced and Mrs. Latane's and Mrs. Gresham's.

Q. Please state how many streets there are in Tappahannock parallel with the river?

A. Three.

Q. Please state whether or not Mrs. Gresham's fence on the south

side of the street you call Main street (and the plat calls Prince street) extends into the waters of the Rappahannock river?

Counsel for plaintiff except to this question, because it does not appear that this witness knows anything about the boundary line of Mrs. Gresham's property.

A. Yes, sir, it does.

Q. Please state how far the fence on the opposite side of Main street from Mrs. Gresham's comes towards the river?

A. Well, I suppose it is 40 feet or 35 feet.

Q. Is there or not a corner where Mr. Wynn's fence running towards the river, stops?

A. Yes, sir.

Q. In what direction does the fence continue, from that corner?

A. North and south. Runs north right to the water.

Q. Is that up the river?

A. Up the river, yes, sir.

Q. How far does that fence run up the river?

A. Runs up to Mrs. Latane's—joins Mrs. Latane's fence.

Q. In which direction does Mrs. Latane's fence run?

A. Same way—north and south.

Q. Practically a continuation of the same line?

A. Yes, sir; it is not exactly straight; it is the same line of fence though.

Q. How far does Mrs. Latane's fence run up the river?

A. I could not tell exactly; I suppose 25 or 30 feet.

Q. What stops Mrs. Latane's fence?

A. It just goes up to the corner—her lot is enclosed by the fence.

Q. You say her fence goes up to the corner and her lot is enclosed by her fence. What corner do you mean?

A. Corner of Main street, they have it there I think; up by the pickle factory.

Q. You say to the corner of Main street?

A. I mean Prince street.

207 Q. Then you mean that her corner is at the intersection of her line with the street north of the wharf?

A. Yes, sir.

Q. In which direction does her fence run from that corner?

A. It runs east and west.

Q. Does her land run west from that corner?

A. Yes, sir, runs west.

Q. Is that in a direction towards the interior of the town, from the river?

A. Yes, sir.

Q. Does that fence of Mrs. Latane's follow approximately, or to the best of your knowledge, the line of the street on which the lot binds?

Q. Well, it is about eight feet from the street?

A. Eight or ten feet from the street.

Q. Is or not the 8 or 10 feet the side-walk?

A. Yes, sir.

Q. Please state who owns the land across the street from Mrs. Latane's, still up the river?

A. Judge Wright, to the best of my knowledge—I don't know.

Q. Please look at the plat now handed you and say whether or not the location of Wright's land as shown by this plat is correct?

A. It looks to me as though it ought to be over this way.

Q. You think Wright's land should be on the other side?

A. Yes, sir, on this side.

Q. Above the wharf?

A. Yes, sir, above the wharf.

Q. Please state whether or not there has ever been any fence or other obstruction to prevent free passage from street to street shown on this map, along the river shore in Tappahannock?

A. No, sir, not to my knowledge.

Q. Do you know, or not, that there has not been such obstruction in the last nine years?

A. No, sir.

Q. Do you mean that there has not?

A. No, sir, there has not.

Q. Have the public the free and undisturbed use of that section of river shore between these streets?

A. Yes, sir.

Q. Is or not that section of the river shore a public landing in constant use by small boats, and fish boats generally?

Counsel for plaintiff object to the foregoing question, for the reason that it does not specify the exact location; and for the reason that what is or is not a public landing is a question of law and not one of fact.

A. Yes, sir.

Q. Do I understand you to say that the public traveling by land, and those traveling in small boats by water, are accustomed to land along the shore on both sides of the point where the wharf touches the shore, and to travel at will over this section of shore be-
208 tween the street marked Main street and the street marked Prince street on this plat?

A. Yes, sir.

Q. Is it or not the custom in the herring season for many small vessels, "bug-eyes" and small schooners, to come to this point and sell fish?

A. Yes, sir, it is.

Q. Are or not herring sold by the thousand every season at this place?

A. Yes, sir.

Q. Do or not the people for many miles back in the interior come to this section of shore in Tappahannock, with their vehicles, and buy herring from these boats, by the thousand?

A. Yes, sir.

Q. Has or not this custom prevailed ever since you can remember?

A. Yes, sir.

Q. Is it or not a fact that many small boats bring fish to the pier

head and to the pier, and there sell and dispose of fresh fish of various kinds in season?

A. Yes, sir.

Q. Is it or not a fact that a raised wagon-way has been constructed across this section of beach, from the corner of Mr. Wynn's lot to the shore end of the wharf bridge, by the town of Tappahannock?

A. No, sir, by Mr. Williams the walk was put there. He had the poles put there, and the deck hands off the boats put ashes between the poles and had it packed.

Q. Then I understand you to say that a side-walk has been constructed from the wharf-way across the beach beyond Mr. Williams' land, and to the side-walk on Main street?

A. Yes, sir.

Q. Has or not steps been placed near this corner by the town of Tappahannock, to serve the convenience of foot passengers going to and from the wharf?

A. Yes, sir.

Q. Is or not the pier head at Tappahannock wharf in navigable waters of the Rappahannock river?

A. Yes, sir.

Q. Have you or not seen schooners of considerable size, lying alongside the pier and inside of the pier head?

A. Yes, sir. You mean by the inside of the pier head the side, don't you?

Q. Yes. Have you seen them lie far enough in so that the steamers could land across the front, at the same time?

A. Yes, sir.

Q. Did you or not ever see the Tourist land on the lower side of the pier head, at the time when another steamer was lying across the front of the dock?

A. Well, she landed there and discharged freight across another vessel, to the wharf, I saw that once.

Q. What compensation do you receive for your services as wharf agent?

A. Well, I don't know the commission—it is the same as Mr. Ware's only I don't know what per cent.

209 Q. Do you or not get the same compensation that Mr. Ware gets?

A. I don't know—I don't think I do. It runs between four and five hundred a year.

Q. You have stated that you have been wharf agent at Tappahannock for two years?

A. Yes, sir.

Q. Is it a fact that you have never had a settlement with the Weems Line in that time?

A. Yes, sir, I have had a settlement with the Weems Line.

Q. Then how is it you are unable to state the amount of, or rate of compensation paid you?

A. Well, he never states it. He just counts up the commissions for each month and adds it together and sends check.

Q. How often do you get money as wharf agent?

A. Once a year. We generally settle up at the end of the year.
Q. Then do I understand you to say that you have no settlement, but that a remittance is made you?
A. Yes, sir; you mean about the commissions?
Q. For your services, yes.
A. Yes, sir, I don't know what per cent. I get.
Q. What amount did you receive for your services the first year?
A. The first year I think it was $513, if I am not mistaken.
Q. What amount of money did you receive for your services the second year?
A. The first year was four hundred and something, and the second $547, that is what it was. It was nearly five hundred the first year, and the second $547.
Q. What is the nature of the traffic carried on over the wharf at Tappahannock?
A. Well, merchants from the country with produce, vegatables and fruits.
Q. Is or not Tappahannock wharf the shipping point used by the inhabitants of a large section of the country adjacent?
A. Yes, sir.
Q. Do or not all the people who desire to, make it their shipping point without let or hindrance?
A. Yes, sir.
Q. Please state whether or not there is any other wharf at or near Tappahannock, at which vessels can land?
A. The nearest one is Naylor's and the other Ware's—Ware's or Wellford's either.
Q. How far is it from Tappahannock to Naylor's?
A. It is called five miles.
Q. Is Naylor's on the same, or the opposite side?
A. Opposite side.
Q. How far is it from Tappahannock to Wellford's?
A. I think that is called the same distance—five miles.
Q. Is Wellford's on the same or the opposite side?
A. Opposite side from Tappahannock.
210 Q. Which is the nearest wharf above Tappahannock on the same side?
A. Blandfield.
Q. How far is it by the nearest road from Tappahannock to Blandfield?
A. I don't know; I never heard what the distance was.
Q. Please state as near as you can?
A. I think it is about nine or ten miles.
Q. How far is it from Tappahannock to the next wharf below on the same side of the river by the road?
A. It is nine miles, I think—I am not sure.

Redirect examination.

By Mr. WILLIAMS:

Q. Are those steps that you say the town put there near the wharf on the Weems Company's property?

A. No, sir.

Q. Is the traffic that you have spoken of as going over that wharf, traffic to and from the Weems Steamboat Company's boats?

A. Yes, sir.

And further this deponent saith not.

BAYARD WRIGHT.

NOTE.—By agreement between parties, by counsel, the signature of the witness is waived.

B. S. ASKINS, another witness introduced on behalf of plaintiff, being first duly sworn, testified as follows:

By Mr. WILLIAMS:

Q. How old are you?

A. 17 last February.

Q. Where do you live?

A. Port Royal.

Q. How long have you been living there?

A. Was born there; lived in Baltimore about four years; have been back from Baltimore about four years.

Q. Do you attend to the wharf at Port Royal?

A. Yes, sir.

Q. Have you had any instructions as to the use of Port Royal wharf by vessels other than those of the Weems Steamboat Company?

A. No, sir.

Q. Have any vessels landed there since you had charge?

A. The Tourist has landed there and some fish vessels.

Q. Has wharfage ever been charged, so far as you know?

A. No, sir.

211 Q. The only vessels then that have landed there have been the fish vessels, the Tourist, and the Weems Steamboat Company's boats, is that correct?

A. Yes, sir, those are the only ones I know, as long as I have attended to it.

Q. Did the Tourist land there with the consent of the Weems Steamboat Company, or not, so far as you know?

Counsel for defendants object to this question, on the ground that counsel for plaintiff has failed to show any means of knowledge on the part of the witness as to the matter inquired into.

A. She landed there without it.

Q. How do you know that?

A. Well, I was ordered by the Weems Steamboat Company to stop her from landing there, and also not to let her have anything come through the warehouse or stop up the walkway.

Q. Did you do it?

A. Yes, sir.

Q. What happened?

A. She broke it down; broke away the pass-way about three times and on one trip Mr. W. T. Pratt and A. F. Turner came down to the

boat with a horse and buggy. Mr. Archer came to me and asked me did I have the key. I said yes; he said he wanted to put the horse and buggy through there. I told him I had orders from Mr. Williams not to let anything go through there. He said, he would break it down if I did not let the horse and buggy through. I said I can't help that; I can't open it. With that they went on the boat and got an axe, which they said was brought down for the purpose. A fellow, I don't know his name—I think he was from Leedstown—he put the axe into the strip of the door and prized it up and Mr. Archer took his hand and pulled the strip off. They took the horse and buggy through, closed the doors, and never locked it up or anything.

Q. When was that—what month was it?

A. I don't remember the month. I never thought anything about the month.

Q. How long have you attended to the wharf at Port Royal?

A. Three years.

Q. Do you know whether or not there was ever a sign up on Port Royal in regard to trespassers?

A. There was, sir.

Q. What was the character of that sign?

A. It said that this wharf is private property, and no trespassing allowed on it; Henry Williams, Agent.

Q. What was the nature of that—wood or paper sign?

A. Wood sign.

Q. Where was it fixed?

A. Outside of the warehouse, in full view of everything coming to the wharf.

Q. How large was that sign?

A. About three feet.

212 Q. Three feet by what?

A. Three feet by about one and a half.

Q. How long was that sign up there?

A. It staid up there, I suppose about three and a half years, until it got rusty and fell down—fell overboard, and was washed off.

Q. How long ago was that?

A. It has been a couple of years.

Cross-examination.

By Mr. CARTER:

Q. You have stated that you have lived in Port Royal four years this time?

A. Yes, sir.

Q. Are you or not familiar with the location and situation of the streets?

A. I am.

Q. Are you or not familiar with the situation along the river front of Port Royal, and the location of the wharf?

A. I am.

Q. Please look at the plat now handed you, marked Exhibit No. 16, and state whether or not it correctly represents the situation there?

A. It is all right, as I know the place.
Q. Is there or not another landing opposite Port Royal?
A. Port Conway, yes, sir.
Q. Is there or not a ferry between Port Royal and Port Conway?
A. Yes, sir.
—. Please state where the ferry boats land, and where is the regular ferry landing in Port Royal?
A. On Mr. Thornton's land in front of King street, Port Royal.
Q. How far from the Weems Line Bridge?
A. About 105 or six yards.
Q. Is there not a ferry landing very shortly above the land end of the bridge, from the wharf?
A. Well, I have seen them land there; they land regularly though where I have just told you, on Mr. Thornton's land in front of King street.
Q. Then I understand you to say that you have seen the ferry boat land at times immediately above the shore end of the wharf?
A. Yes, sir, I have seen her come in there.
Q. And take on and discharge passengers there?
A. Yes, sir.
Q. Is or not a portion of the present wharf structure at Port Royal in a line with, and immediately in front of a public street?

Counsel for plaintiff objects to this question, for the reason that there is nothing to show that there is a public street, and that nothing can show the character of the street except the records of the town.

213 A. All I know is, I know the wharf abuts on Mr. Williams' property. I was there when it was surveyed, and I helped drag the chain.
Q. Have you or not stated that you are familiar with the town of Tappahannock, and with the streets of the town, and the river shore of Port Royal?
A. Yes, sir.
Q. Is there or not a street which runs in the direction of the river, just below the shore end of the wharf?
A. Well, whether it has been changed to a street, I don't know, but it used to be a road.
Q. Then I understand you to say that there is a road, or street, which goes——
A. Down to the river, yes, sir.
Q. Immediately below the shore end?
A. Below Mr. Williams' wharf.
Q. Does or not the wharf or part of the wharf structure stand immediately in front of this road or street?
A. Well, you can see the end of the wharf by standing in the street up there—by taking the straight line of the street you can see the end of the wharf which runs slanting—just like that plat there.
Q. Is or not the pier head at Port Royal in the navigable waters of the Rappahannock river?
A. The outside of it is in about nine feet of water, and the inside

is in about two feet of water; so that a little launch can lay there in low water.

Q. What is the size of the pier head?

A. About 50 x 25—something like that.

Q. Is the pier head below low water mark?

A. Well, yes. I have seen the bottom clean out to the pier head. I have walked out there.

Q. What is the character of that bottom?

A. Mud.

Q. In what condition were you when you walked out there?

A. I had off my shoes and stockings, and pants rolled up to my knees.

Q. Could you walk around the end of the pier without getting into the water?

A. No, sir.

Q. Do vessels constantly land at the pier?

A. No, sir, nothing but the Weems Steamboats; and the Tourist has been coming there.

Q. You have stated that other vessels landed there, to land fish?

A. For my father, yes, sir; no wharfage is charged, or nothing.

Q. Is it or not a fact that Mr. Powers and other farmers have frequently shipped grain by vessel from Port Royal wharf, and paid wharfage there?

A. Not since I have been attending to it, sir.

214 Q. Do you know whether or not wharfage was paid for shipments of this kind, before you were agent?

A. No, sir, I don't know whether it was paid or not.

Q. Are you the agent at Port Royal?

A. Yes, sir.

Q. What connection has your father with that wharf?

A. It was got through him; he took it first and turned it over to me. Took it between four and five years ago, and when I came back from Baltimore he turned it over to me.

Q. Is there any other wharf at Port Royal except this one?

A. No, sir.

Q. What is Port Royal?

A. It is a town.

Q. Any stores there?

A. Four.

Q. Post Office?

A. Yes, sir.

Q. Blacksmith's shops?

A. One.

Q. Any other enterprises there?

A. No, sir—there is a carpenter

Q. Is or not the wharf at Port Royal the regular shipping point for the people of the town, and for a considerable section of the country around the town?

A. It has always been for the Weems Steamboat Company since I have been attending to it.

Q. What is the nature of the traffic carried on over the wharf?

A. General produce.

Q. Who are the owners of the merchandise shipped over the wharf?

A. The merchants and farmers.

Q. For how much of the section of the country is Port Royal a shipping point?

A. I suppose an average of about six miles.

Q. What is the nearest wharf to Port Royal wharf, above on the same side of the river?

A. Haymount.

Q. How far is it by land, by the ordinary road, from Port Royal around to Haymount?

A. About eight miles.

Q. What is the nearest wharf on the same side of the river, below Port Royal?

A. Port Micou is the nearest wharf, but the boats don't always stop there regularly.

Q. How far is it from Port Royal to Port Micou?

A. By land?

Q. Yes.

A. About 13 miles.

Q. What services do you render as agent at Port Royal?

A. Well, I get a commission. My father gets a commission; he pays me to take care of it.

Q. You say your father gets a commission?

A. Yes, sir, I don't know what he gets.

Q. I understand you to say that you are the agent?

A. Yes, sir.

Q. And your father gets the commission?

A. Yes, sir.

215 Q. Who employs you?

A. The wharf was turned over from him to me.

Q. Have you any arrangement with the Weems Steamboat Company?

A. No, sir; just through him; he turned it over to me.

Q. Then I understand that your father is really the agent, and that you are his assistant or his clerk?

A. Yes, sir, but I attend to it all the time; he never comes there.

Q. I understand you to say that you don't know what compensation is paid him for attending to the wharf?

A. No, sir.

Q. Do you actually perform the services of agent at Port Royal?

A. Yes, sir.

Q. What is the nature of the services as performed by you for the Weems Steamboat Company?

A. I attend every boat; catch the lines; take down the freight and deliver it to the clerk on board the steamer, collect the freight bills and pay them in.

Q. Do you have anything to do with the freight that comes there?

A. Yes, sir; I deliver that.

Q. Is there any structure of any kind on the pier head at Port Royal?

A. We have a warehouse for freight.

Q. What use is the warehouse there put to?

A. For the storage of Weems Steamboat freight.

Q. You have stated that you had orders from Mr. Williams to lock up that house and barricade the foot-way?

A. Yes, sir.

Q. You stated in answer to a question in your direct examination that you did so, and the barricade was broken down?

A. Yes, sir.

Q. Please state whether or not in your conduct in connection with this barricade, you followed strictly the orders given you by Mr. Williams?

A. I think I followed them as near as I could. He told me to nail them up every time they were broken down; they kept on breaking them down.

Q. Did you or not on one occasion nail up and barricade, such as you have described, and then smear the barricade with filth or coal tar?

A. I smeared it with tar, yes, sir.

Q. Were you directed to put this tar on the obstruction by Mr. Williams?

A. I was directed to put them up there and try to keep them from coming by there, and they kept on pulling it down and I did not see any other way of keeping them from doing it; I thought tar would keep them from catching hold of it.

Q. I understand you to say that you were authorized by Mr. Williams to do everything which you did do in connection with barricading the wharf?

A. Yes, sir.

216 Q. Is there or not a post office at Port Royal?

A. Yes, sir.

Q. How is that post office served?

A. It is served—people come to the office and get their mail.

Q. How do you get the mails?

A. We have a route from Bowling Green; and a route by steamer.

Q. Is the mail by steamer carried to and from the post office over the wharf and streets of Port Royal?

A. Yes, sir.

Q. Is there or not any fence coming to the river shore, or any other obstruction to prevent free passage from street to street along the water front of Port Royal, and past the shore end of the wharf?

A. There has never been any street along there; it has always been considered private property—part of Mr. Powell's; part of Mr. Thornton's; part of Mr. Williams'.

Q. Has there or not been any fence or other obstruction to prevent the passage of the public along the river shore between the streets above and below the wharf?

A. No, sir.

Q. Are or not the public accustomed to use this strip of river shore, at their pleasure, coming to and going from the wharf?

A. They use it—it is used to store ties on; when there are no ties

on there they use it; when there is, they go down the other street to the wharf.

Redirect Examination.

By Mr. FITZHUGH:

Q. You stated that you put some tar upon the obstruction. Did you put that tar there of your own accord, or by directions from Mr. Williams?

A. I put it there of my own accord. Mr. Williams ordered me to nail up the place, and they broke it down. I wrote to him and he ordered me to nail it up again and try to get it up so they could not get it down. They pulled it down three or four times, so I went up there and put something on it to try and keep them away from it.

And further this deponent saith not.

B. S. ASKINS.

NOTE.—By agreement of parties, by counsel, the signature of the witness is waived.

A recess was here taken until 3 o'clock P. M.

217 HENRY WILLIAMS, another witness introduced on behalf of plaintiff, being first duly sworn, deposed as follows:

By Mr. FITZHUGH:

Q. Will you please state whether you are the President of the Weems Steamboat Company?

A. I am.

Q. When was that company chartered?

A. I think in 1892.

Q. In the State of Maryland?

A. Yes, sir.

Q. Please state whether there was a line of steamboats running on the Rappahannock river between Baltimore and Fredericksburg, prior to October, 1874?

A. There was.

Q. Please state how many boats there were thus run, and the owners thereof?

A. There were two boats—the "Winona," owned by the Baltimore & Susquehanna Steamboat Company, and the "Matilda," owned by Capt. Mason L. Weems and his brother Theodore Weems.

Q. Please state whether Mason L. Weems had two daughters, one of whom married yourself, and the other Mr. Forbes?

A. He had but two children—one Georgeanna, I married; the other, Matilda S., married Mr. Forbes—Sidney H. Forbes.

Q. Please state generally what was the condition of the title to the Steamer "Matilda," in October, 1874?

A. It was owned, as I said, by Captain Mason L. Weems and his brother, Theodore We-ms.

Q. Was Theodore Weems living at that time?

A. No, I beg your pardon, he was dead; he died a few years before; in October, 1874, one-half was owned by Mason L. Weems individually, and the other half by him as trustee for the estate of his brother, Theodore Weems.

Q. When did Mason L. Weems die?

A. In October, 1874.

Q. Who inherited his half of the Steamer "Matilda" at his death?

A. His two daughters, Georgeanna and Matilda.

Q. Who became the general manager, with complete control of the "Matilda" at the death of Mason L. Weems?

A. I did; I was executor of the will, and also had complete control, representing the two daughters.

Q. Had you previous to October, 1874, married one of these daughters?

A. I married in June, 1868, Georgeanna.

Q. When did Mr. Forbes marry the other daughter?

A. A. I think about '70.

Q. Then did or did not Mason L. Weems' two daughters acquire the half interest which had belonged to Theodore Weems?

A. By the will of Theodore Weems the whole of his property was left to his brother, Mason L. Weems, in trust for his four nieces—the two daughters of Mason Weems, and the two daughters of George Weems.

218

Q. Well, did or did not Georgeanna Williams and Matilda Forbes acquire the interest of Theodore Weems' nieces?

A. They bought out the interests of their two cousins a few months after the death of Captain Mason Weems.

Q. Did Mrs. Williams and Mrs. Forbes obtain title deeds from those parties, or from parties authorized to convey the title for their interests?

A. It was held in trust after the death of Mason L. Weems; Judge Crane was appointed trustee.

Q. I just wanted to know whether, by good and sufficient deeds the interests of Theodore Weems' nieces were acquired by Mrs. Williams and Mrs. Forbes?

A. They were.

Q. Did or did not Mason L. Weems and Theodore Weems, his brother, have any interest in any wharves on the Rappahannock river at the time of the death of Mason L. Weems in 1874?

A. They had a half interest in all wharves owned by the line.

Q. How many were they—name them?

Counsel for defendant object to this question, because the record title is the best evidence.

A. At the time of his death, as well as I can remember the wharves owned by the line were Urbanna, Tappahannock, Leedstown, Port Royal, and Fredericksburg. I think they were all.

Q. Did Mrs. Forbes and Mrs. Williams at the same time they acquired the interest of Theodore Weems' nieces in the Matilda, also acquire their interest in these wharves?

A. They did. By decree of the court they were sold, and deeds executed.

Q. Now tell us about the Winona that you have spoken of. You state that at the time of the death of Mason L. Weems the Winona was another steamer that ran between Baltimore and Fredericksburg—owned by whom?

A. The Baltimore & Susquehanna Steamboat Company. Shortly after the death of Mason L. Weems, Mrs. Williams and Mrs. Forbes bought the Steamer Winona, and the undivided half interest in the wharves before mentioned.

Q. Then prior to October, 1874, these two steamers were run between Baltimore and Fredericksburg—one by the two Weems brothers, and the other by the Baltimore & Susquehanna Steamboat Company—those two parties running these boats owning these wharves jointly, is that a fact?

A. Yes, sir, as tenants in common.

219 Q. Then were or were not these two boats run in conjunction with each other, and without any opposition?

A. They were.

Q. You state that after the death of Mason L. Weems, which occurred in October, 1874, the two daughters of Mason L. Weems, to-wit, Mrs. Williams and Mrs. Forbes, acquired a whole interest in the Winona and a half interest in the wharves, by good and sufficient deeds?

A. They did.

Q. And by decrees of the court?

A. The interests of their cousins were sold by decree of court; but as to the Baltimore & Susquehanna, there was no decree there.

Q. Who represented the Baltimore & Susquehanna Company, that ran the Winona?

A. Mr. Taylor—Robert A. Taylor was the superintendent.

Q. Is he the superintendent spoken of in these depositions as Captain Taylor?

A. Yes, sir.

Q. Have you or not ever since the acquisition of the interests of the Baltimore & Susquehanna Company in the Winona, and in those wharves you have mentioned; and in the acquisition of the outstanding interests in the Matilda, by your wife and Mrs. Forbes, had exclusive management and control of the line between Baltimore and Fredericksburg?

A. I have had the absolute control of it from that time to this.

Q. Did the title to these wharves and to the steamboats controlled by you as the agent of these two ladies, continue in Mrs. Forbes and Mrs. Williams until this Weems Steamboat Company was chartered?

A. It did.

Q. Did or did not then Mrs. Williams and Mrs. Forbes convey all of this property, boats and wharves, by good and sufficient deeds, to the Weems Steamboat Company?

A. They did.

Q. Does or does not the Weems Steamboat Company consist of two stockholders, to-wit, Mrs. Forbes and Mrs. Williams?

A. Practically it does.

Q. After Mrs. Forbes and Mrs. Williams acquired these two steamboats and these wharves, did they continue from that time to the present, to run a line of steamboats between Baltimore and Fredericksburg, without any interruption?

A. They did, without any interruption.

Q. Please state what steamboats have been added to this line run between Baltimore and Fredericksburg, from the time of the acquisition of the interest in the Matilda and Winona?

A. There have been running on that line regularly the Steamers Theodore Weems; Mason L. Weems; Westmoreland; Richmond; Essex; Middlesex and Lancaster. Occasionally other boats would be put on temporarily—when we had a boat burned up, for in-
220 stance. The Northumberland ran here for a season, and the Mary Washington for awhile; we ran the Colbert also for awhile.

Q. Have all these boats been purchased or built by Mrs. Williams and Mrs. Forbes?

A. Yes, and by the Weems Steamboat Company.

Q. What is the average cost of one of your steamboats plying between Baltimore and Fredericksburg?

A. They run from $100,000 to $150,000 each. The Essex is a smaller boat—that did not cost as much; that cost about $50,000; but the others have cost between $100,000 and $150,000 each—all of them over $100,000.

Q. What is the average life of each of such boats?

A. As a general thing it don't pay to run a boat after she is twenty years old; it is cheaper to get rid of her and get a new boat.

Q. Did the Winona and Matilda wear out after you came into control, and have to be substituted by new boats?

A. They did.

Q. Please state whether, since you took charge in October, 1874, any other line of steamers has been run between Baltimore and Fredericksburg?

A. No, sir.

Q. Has any line of steamers run upon any portion of that route?

A. I think about '76 a steamer called the Eliza Hancock ran for a month or two to Norfolk.

Q. Between Fredericksburg and Norfolk?

A. I think she came from Fredericksburg. Then also there was a boat I think that ran for a week or two from Washington, called the Lady of the Lake.

Q. Any other boats?

A. No.

Q. How about the Tourist?

A. I understand there is a boat called the Tourist running down there. I have never seen it.

Q. Between what points does the Tourist ply?

A. I don't know, sir, only from hearsay. I can tell you what I have heard.

Q. Don't you know it in a way that amounts to knowledge?

A. I understand she runs from Urbanna to Fredericksburg; still I have never seen her running in my life.

Q. Have you any doubt that the Steamer Tourist ply-s between Urbanna and Fredericksburg regularly every day?

A. I have heard she does, but I can not say of my own knowledge.

Q. What wharves on the Rappahannock river does the Weems Steamboat Company now own?

A. It owns—at least it claims to own—and has deeds and all the title that can be gotten, the following wharves: Fredericksburg; Port Royal; Leedstown; Tappahannock; Wellford's; Sharp's; Urbanna; Mill Creek; North End; Wilson's; Riverview.

221 Q. What wharves on the Rappahannock river does the Weems Steamboat Company lease?

A. It leases Carter's; Naylor's; Ware's; Monaskon; Bayport; Irvington; Weems; Burham's; Whealton's; Waterview and Bowler's —I think that is all.

Q. How long have you, representing the line of steamers between Baltimore and Fredericksburg, both as general manager under Mrs. Williams and Mrs. Forbes, and then as president of the Weems Steamboat Company, leased these wharves you have named that the company does not own?

A. Most of them ever since we have been running there, and the remainder of them from the time they have been built.

Q. Have you built any wharves on the Rappahannock river since October, 1874, when you took charge?

A. Yes, sir, quite a number—built and bought.

Q. Have you had to renew any wharves that Mrs. Forbes and Mrs. Williams owned, or that the Weems Steamboat Company owned?

A. They have all been renewed, and some of them very frequently.

Q. Is the construction and repair of those wharves costly or otherwise?

A. Very costly, and especially on the lower part of the river.

Q. What has been your policy ever since October, 1874, when you took charge of the line between Baltimore and Fredericksburg, touching the permission to other river craft to receive and discharge freight at the wharves owned by you?

A. I have never allowed any other boats to land at our wharves; I have never given permission, except to a friend or patron of the line who would occasionally write and say that he wanted a cargo of coal landed, or wanted to take off some corn, or asking some favor of that kind, and I have always granted it when I could, provided it did not interfere with us—with the exception of Port Royal, where Mr. Taylor made some arrangement with the wharf agent there to allow vessels to land there and pay wharfage; but soon after I got control I was afraid that it might be construed as giving the public the right to go there if that was permitted, and I forbid it positively; and for the last twenty years have not allowed a cent of wharfage to be taken from anybody.

Q. At any of the wharves?

A. At any of the wharves.

Q. What agreement, if any, had you with reference to the wharves along the Rappahannock that were owned by individuals and leased by you, as to their use by other river craft?

A. I don't know that there was any agreement formulated, but the understanding, as far as we came to an understanding, was that said vessels could stop there provided they did not interfere with us and our business.

222 Q. In other words, the owners of those wharves had the privilege of allowing sail vessels to stop at these wharves they had leased to you, provided it did not interfere with the business of the steamboats?

A. Yes, sir.

Q. What was the understanding as to other steamboats than those controlled by you?

A. There were no other steamers to come along.

Q. Except this sporadic affair you say, of the Hancock and the Lady of the Lake?

A. Yes, sir.

Q. And lately the Tourist?

A. Yes, sir.

Q. Then am I to understand, or not, that the five wharves now owned by the Weems Steamboat Company have never been held out as public wharves?

A. They never have been held out as public wharves, and I never built a wharf since I had control, unless we had the clear fee simple title to the land on which it was built. I never would build a wharf at the foot of a public road, and I always insisted upon it that the wharves were our own private property, built on our own land, on which we paid taxes regularly, and that it is as much trespass for any people to go on them without permission as it would be for them to come into my private house; because we have a deed to the land and it is only used for our business, just as a merchant uses his store; and the man who comes there is a trespasser, and nothing but a trespasser, in my opinion.

Q. You acquired, after you took charge in 1874, the ownership of some wharves—which were they?

A. Since 1874 we have bought Sharp's—that was first—Wellford's, Riverview, Wilson's, North End and Mill Creek. I think they are all we bought.

Q. And you state that with the exception of about two years after you took charge, in which you permitted wharfage to be collected at Port Royal under arrangement made by Captain Taylor in his life-time, that you have never allowed any wharfage to be collected?

A. I can not say the number of years—it has been so long ago—but a few years after I took charge I stopped that business, and since then have taken not one cent of wharfage.

Q. Have or have not your instructions invariably been to all your agents at the wharves owned by your company, or by the two ladies prior to the charter of the company, that they were not to

charge any wharfage or permit anybody to stop there except as a personal favor?

A. I have invariably told them.

Q. Did you ever publicly proclaim that they were private wharves?

A. I put up notices on the wharves to the effect that they were private property, and warning steamers that they were trespassing in coming to it.

223 Q. Did you not as soon as you were informed that the Tourist was claiming the right to stop at the wharves owned and leased by you on the Rappahannock, serve notice on them that you forbade it?

A. I did.

Q. Please examine Exhibit "T," filed with the plaintiff's bill in this cause, which purports to be a letter dated December 6, 1902, from William D. Carter to Henry Williams, president of the Weems Steamboat Company, and state whether you received said letter in reply to a notice forbidding the steamer Tourist to stop at any wharves owned or leased by your company? (Here hands witness paper filed herewith as "Exhibit No. 17.")

A. I did receive this.

Q. Please examine the paper filed as Exhibit "N" with the plaintiff's bill, and which purports to be an agreement of the 31st day of January, 1901, between the Weems Steamboat Company and A. B. Evans, and state whether this is a paper executed by you as president, and by Mr. Evans. (Here hands witness paper filed herewith as "Exhibit No. 18.")

A. Yes, sir.

Q. Please state whether you are renting this Waterview wharf under that same agreement, at the present time?

A. Yes, sir.

Q. I hand you what purports to be seven leases to the Weems Steamboat Company, one from R. G. Neal; one from the Whealton Packing Company; one from B. L. Farinholt; one from Robert L. Ware; one from T. D. & J. J. Marks, and one from M. A. Carter; (all of which have been heretofore filed as exhibits, except the one from M. A. Carter, which is herewith filed as Exhibit No. 19). Please examine these alleged leases and state whether they are existing and operative leases with your company.

A. These leases are all operative and held by our company.

Q. Do you know the handwriting of M. A. Carter?

A. Yes, sir, I am very familiar with it.

Q. Please examine that and see if it is in his writing?

A. Yes, sir, that is his handwriting. He is dead now.

Q. Please state whether or not your company could, in an action at law, recover for the damages inflicted by the Tourist upon your company. In other words would it be possible or practicable to ascertain the number of passengers or the amount and value of the freight transported by the Steamer Tourist to and from the wharves of your company, or those you lease?

A. We have no means at all of ascertaining what business they are doing there; and in addition to what you say, she occupies our

wharves sometimes and we can not get to them with our own boats, and they have to lay out in the stream until she gets away—so the Captain tells me.

224 Q. (Question repeated.)

A. It would not be possible.

Q. Would it be practicable for your company to ascertain the names or the residences of those persons who, at the aforesaid wharves of your company, trespassed upon said wharves in landing from or embarking upon the Steamer Tourist, or in loading upon or unloading from, freight from the said steamer Tourist?

A. It would be impossible for us to find it out.

Q. Is it or not true, from the best information you can obtain, that the steamer Tourist, ever since November, 1902, has been discharging and receiving freight and passengers from and to all the wharves owned or controlled by your company between Fredericksburg and Urbanna?

A. That is the information I have.

Q. Please state whether or not, from the time you took control of the line of steamers between Baltimore and Fredericksburg, in 1874, to the present time, you have ever been informed, or has your company or Mrs. Forbes and Mrs. Williams ever been informed, of any action by the County Court of any county in which you own or lease wharves, that said county court has ever taken any action to open any public roads upon the wharves owned or leased by your company, during that period of time?

A. I have never received any information of the opening of any roads through the lots owned by our company or controlled by us.

Q. Have you or not been, ever since October, '74, notoriously the man in control of that line of steamers?

A. I have, sir.

Q. Have you or not during that period of time, ever had any complaint made that the location of the wharves owned or controlled by your company, or leased by your company, interfered with the navigation of the Rappahannock river?

A. I never have.

Q. Or that said wharves interefered with any public landing or ferries on said river?

A. I have never heard any such complaint.

Q. I hand you paper bearing date the 23rd day of January, 1875, between the Baltimore & Susquehanna Steamboat Company, and Henry Williams and Georgeanna Williams, his wife, and Sidney H. Forbes and Matilda Forbes, his wife, which purports to be a contract for the sale by the parties of the first part of the steamer Winona, and the wharf property of which you have spoken. Please state whether that is the original contract for the purchase of said property, and whether it was consummated subsequently by deed. (Here hands witness paper marked "Exhibit No. 20.")

225 A. This is the original contract and deeds were executed for the wharf property, and a bill of sale for the steamer shortly afterward.

Q. You have stated that when the steamer Tourist first commenced to ply between Fredericksburg and Urbanna, you notified those in

control of said steamer that they were forbidden to use any of the wharves owned by your company, or those leased by your company. Did the Steamer Tourist, and those controlling it, respect your prohibition, or have they continued to stop at your wharves ever since?

A. They did not respect it, but have continued to stop there ever since.

Q. Have they or have they not tendered you from time to time, such wharfage as they claimed they owed you, and what have you done with it?

A. I received on two, or perhaps three occasions—I don't remember which—checks which they claimed to be for wharfage for the use of our wharves, and I sent them to Fredericksburg, and told them to consult you, and they were returned by your advice to the parties who gave them.

Q. In the bill filed by your company, to which your name is attached as president, this allegation appears: "Your orator further says that the defendants are thus, by force and violence, using the wharves of your orator, erected and kept in repair at immense cost, for the purpose of diverting from your orator's steamboats the traffic and travel which have been attracted to said wharves and to said steamboats by the erection of said wharves and the facilities furnished at said wharves for public accommodation, and induce said traffic and travel to patronize the said steamer Tourist, to the great loss and injury of your orator's steamboat line, which steamboat line represents an investment of five hundred thousand dollars; and the said defendants have to a certain extent accomplished said purposes and are damaging your orator thousands of dollars, and threaten to damage your orator many thousands of dollars more, unless they shall be restrained by the strong arm of the law." Please state whether or not it is true as therein alleged that your steamboat line represents an investment of five hundred thousand dollars, and whether or not it is true that the said Tourist is damaging your orator to the extent of thousands of dollars, and threatens to damage your orator many thousand of dollars more?

A. It is true.

Q. You state in said bill as follows: "Your orator further charges that the matter in dispute in this cause exceeds two thousand dollars, exclusive of interest and costs, and the rights and property in dispute and controversy herein greatly exceed the said sum of two thousand dollars, exclusive of interest and costs." Is or is not that statement true?

A. It is.

226 Q. I feel satisfied that I have asked you the question, but to make sure of it I will repeat it. Have Mrs. Williams and Mrs. Forbes, and you and Mr. Forbes deeded these five wharves owned by the Weems Steamboat Company, to the Weems Steamboat Company, and are the deeds for the same filed with your bill in this case?

A. They have executed deeds to the Weems Steamboat Company, and they are on record, and they are, I believe, made exhibits with the bill.

Q. Whereabouts is the principal office of the Weems Steamboat Company?

A. Baltimore, Md.

Q. You state that ever since October, 1874, when you took control of the line between Baltimore and Fredericksburg, the line has been continuously run. Please state how many boats a week have been run on that line?

A. Generally there are two to Fredericksburg—sometimes three; but from the lower part of the river to Baltimore we have a daily boat, or at least five times a week; and we have also one or two boats a week to Norfolk.

Q. Then I understand that ever since you have taken charge there have been two boats a week—sometimes three—to Fredericksburg, and at least five boats a week from Baltimore to Tappahannock and back?

A. Yes, sir.

Q. And at times two or three boats per week from Tappahannock to Norfolk?

A. Yes, sir.

Q. You have not all the time from 1874 to the present, run four or five boats a week between Tappahannock and Baltimore?

A. No, not all the time.

Q. Since what time, generally?

A. I think for the last six or eight years we have been running four or five—probably longer than that, I don't know about that.

Q. Have you ever during that period of time, to-wit, from October, 1874, up to the present, run a schedule of less than two boats from Baltimore to Fredericksburg a week, and back?

A. I think not—except in winter time when the river is frozen up.

Q. Have you ever since the first day of January put another boat to ply between Fredericksburg and Urbanna?

A. Yes, sir, put it on the 1st of April.

Q. Does or does not that boat make the same schedule between Urbanna and Fredericksburg that the Tourist does?

A. As advertised by the Tourist.

Q. Please state whether or not the boat you ply between Fredericksburg and Urbanna, to-wit, the Caroline, carries the mail between those two points?

A. It carries the mail between Fredericksburg and Tappahannock.

227 Q. State whether or not the line which you have run continuously since '74, between Fredericksburg and Baltimore, has regularly during all that time carried the mail?

A. It has.

Q. State whether or not during all that period of time, as far as your information as manager, and in full charge, goes, your company has furnished practically all the transportation for produce and merchandise along the Rappahannock river?

A. It has.

Q. How did you acquire Wellford's wharf; you say your company now owns it?

A. Bought it.

Q. Have you a deed for it?
A. Yes.
Q. Is that deed filed as an exhibit with your bill?
A. I suppose so.
Q. Who did you buy it from?
A. Bought it from Douglas.
Q. What Douglas?
A. I don't recollect his name—he is an engineer—Henry T. Douglas.

Q. I hand you paper marked "Exhibit No. 25," purporting to be a lease between the Weems Steamboat Company and John H. Whealton. Is that your signature as president of the Weems Steamboat Company; and is the other signature that of John H. Whealton?
A. Yes, sir.

Cross-examination.

By Mr. CARTER:

Q. How many wharves are there on the Rappahannock river between Fredericksburg and the mouth?
A. I will count them as well as I can, but I may make a mistake. The wharves that we go to are: Radcliffe's; Hopyard; Port Royal; Port Conway; Port Micou; Layton's; Saunders; Carter's; Naylor's; Tappahannock; Wellford's; Ware's; Bowler's; Sharp's; Monaskon; Whealton; Bayport; Waterview; Urbanna; Burnham's; Millenbeck; Merry Point; Irvington; Weems; Mill Creek; North End; Westland's; Riverview.
Q. How many does that make, sir?
A. I did not count them.
Q. It makes thirty. I thought you were counting them?
A. No, sir.
Q. Out of the thirty wharves which you state there are on the Rappahannock river, I understand that you claim to own 11.
A. I have not counted them. Do you want me to count them up?
Q. Yes.
A. Well, there is Westland, or Wilson's; North End; Mill Creek; Urbanna; Riverview; Sharp's; Wellford's; Tappahannock; Port Royal; Leedstown and Fredericksburg.
228 Q. I understand that you claim to hold by exclusive lease 11 other wharves, am I correct?
A. You have the number down there.
Q. Carter's; Naylor's; Ware's; Monaskon; Bayport; Irvington; Weems; Burhan's; Whealton's; Waterview and Bowler's. Do I understand you to say that there are then 8 wharves on the river over which you do not exercise absolute control?
A. I do not recollect the number.
Q. Well, there are 30 in all, and take out 22?
A. Yes.
Q. I understood you to state in answer to a question propounded to you on your direct examination, that you had never built a wharf without previously acquiring title to the shore. Is that correct?
A. It is.

Q. Are you or not familiar with the situation of the wharf at Tappahannock, and with the history of that wharf for the past twelve or fifteen years?

A. I am.

Q. Please state when Tappahannock wharf was last rebuilt?

A. I do not remember the year.

Q. State approximately.

A. I can not remember, really. I know you surveyed it.

Q. Yes, but that was long years afterwards.

A. Oh, originally I found it there.

Q. But I mean the present structure?

A. Well, you surveyed it at the time?

Q. No, I beg your pardon.

A. Well, you can come at it closer than I can.

Q. Well, I can not testify. Did or not a controversy arise between you and Mr. Robert Wynn, of Tappahannock, as to the use of the river shore at the shore end of the Tappahannock wharf, after the construction of the present wharf bridge there?

A. There did.

Q. Did you or not, after such controversy arose, purchase a strip of shore from Mr. Wynn?

A. I did.

Q. Had you or not, previous to that purchase, been accustomed to make use of the same strip of shore which was afterwards conveyed you by Mr. Wynn?

A. I don't know.

Q. Is it or not a fact that from street to street on the river front at Tappahannock, between the streets which the wharf lands, there is an open stretch of shore in use by the public for the purpose of going to and from the wharf?

A. I don't know; I don't know how the streets come in.

Q. Then I understand you to say that you are not familiar with the situation at Tappahannock?

A. I am familiar with the situation at the wharf, but I don't know how the streets run. They are not built up—I don't know how they are laid out.

229 Q. Are the streets fenced to the river shore?

A. I don't remember.

Q. Do you know whether or not the river shore above and below the place where the wharf at Tappahannock abuts upon the shore is a boat landing and has been for many years?

A. I don't know.

Q. You have stated in answer to another question asked you on your direct examination, that your company has been damaged many thousands of dollars by the operation of the Tourist. You stated further that you were not able to figure or estimate approximately the amount of that damage, for lack of certain information. Please state whether or not, if you had the information as to the amount of freight and number of passengers carried by the Tourist, you could definitely fix the amount of damage?

A. I could not.

Q. Will you explain why?

A. Because you have occupied our wharf, and we could not get to it. You have made rates—I don't know what rates you have made—I don't know what rates of freight or what rates of passage you charged; and therefore, I could not tell what business you took from us, or what would have gone in consequence of the low rates and the passes you gave, which we would not have gotten. I would like you to let me explain fully that Tappahannock business. I will go back to that, if you will allow me.

Q. I guess you will get it indirectly. I asked you the question, if you knew the number of passengers, and the amount or volume of freight, could you estimate the amount of damages?

A. I can not, because I don't know how many passengers you took from us. It does not necessarily follow that all the passengers you took, we would have gotten; nor does it necessarily follow that all the freight you got was taken from us. You gave passes I presume—all steamboats companies give passes—and a number of passengers may have gone on passes; so it would be impossible for me to estimate the damage, even if I knew the number of passengers and the volume of freight.

Q. If you had the figures supplied you as to the sum total, the passage fares of the passengers carried by the Tourist that your rates would amount to; and knew what the amount of freight carried by the Tourist would come to at your rates, would you then be in a position to estimate the amount of your damage?

A. I would not; because every time you trespass on our wharf, and run against it, it damages it, I could not say how much. Every time that wharf is used it is damaged somewhat—you can not say exactly what the damage is. Every wharf owner knows that
230 the more the wharf is used the more it is damaged—how much that damage is in dollars and cents I can not say exactly.

Q. Are you prepared to state that any wharf on the river owned or leased by you has ever been damaged by the Tourist?

A. I know you can not use a wharf—any steamboat—without damaging it more or less.

Q. If you have the figures as to the amount of the business which you claim the Tourist has taken away from your line, in dollars and cents, and leaving out of consideration the question of wear and tear on the wharf structures, can you give an estimate of the amount of damage which you have suffered, or which you claim to have suffered?

A. I cannot tell, because I don't know what number of passengers she has taken from us.

Q. I will put the question in another way. If you take in a thousand dollars with one of your boats, for fares and freight, what per cent. is profit?

A. None. If we only take in a thousand dollars, it would not pay us to run it. It depends upon how long you take in a thousand dollars.

Q. What per cent. of the receipts for freight and passengers, when you are doing your usual amount of business, is profit?

Counsel for plaintiff objects to this question, because it is not permissible to go into witness' private business; and further because it is irrelevant and immaterial, as defendant's counsel have admitted that they do not raise the question as to the jurisdictional amount.

A. By the advice of counsel I decline to answer.

Q. You stated in answer to a question by Mr. Fitzhugh as to wharfage, that you had received checks for wharfage from the People's Steamboat Company, and had sent the same back to your representative here to be disposed of as Mr. Fitzhugh should advise. Please state if you are informed what disposition was made of those checks?

A. It was reported to me they were returned to the office of the People's Steamboat Company.

Q. Please state whether or not you received by express the cash for wharfage from the People's Steamboat Company?

A. I received a package by express—perhaps it was money—I am not sure whether it was money or check—I sent it back.

Q. You have stated that your boats had to lie off and wait, because the Tourist was occupying one of the wharves which you claim. Please state whether or not you know of this of your own knowledge?

A. I know it in this way. A few weeks ago I received a letter from a Mr. Burroughs telling me that he had freight on the Caro-
231 line, and that the Tourist was at the wharf and she could not land it, and he claimed damage in consequence, and I paid him $9.25 to recompense him for his loss occasioned by the inability of the Caroline to land there in consequence of the Tourist being at the wharf. I remember that circumstance. It happened a few weeks ago.

Q. Will you state what wharf it was in question?

A. Port Royal.

Q. Will you please give any instance which came under your personal observation, in which the Tourist occupied any wharf which you claim to own, thereby causing any of your boats to lie out?

A. None came under my personal observation, because I have not been on the Rappahannock river for a year; but I have gotten reports of it from our Captains.

Q. You state that the Caroline has been running since April on the schedule advertised by the Tourist. Will you please state when the Tourist began to make that schedule?

A. I don't remember.

Q. Will you please state whether or not it was before or after the Caroline began to run that schedule?

A. Before.

Q. You have stated that you have been accustomed to run several boats per week from Baltimore to Tappahannock and back; and that you have been accustomed to run two, and at times three boats to Fredericksburg. Will you please state whether or not these

boats were accustomed to come up the river all the way to Fredericksburg the same day?

A. Same day as what?

Q. Come up the river in one day?

A. If the tides permitted.

Q. Is it or not a fact that the boats come into Fredericksburg in a large majority of instances tie up at some wharf twenty or more miles below Fredericksburg, and would come into Fredericksburg the next morning?

A. No, sir, that is not true.

Q. Then I understand you to state that your boats would come to Fredericksburg without tying up for the night along the way—constantly?

A. They did, unless the tides, or freshets prevented.

Q. Will you please state whether or not it was the custom for your boats going down the river to leave Fredericksburg and tie up every night?

A. It was generally; we had one boat the last two years that did not do it. It left here in the morning, but left generally in the afternoon; it went as far as Leedstown and stayed there that night; that was for the convenience of the people.

232 Q. Will you please state at what hour the boat left in the morning which you say went through?

A. I don't remember; I think somewhere about seven o'clock.

Q. Don't you know that the schedule of that boat was to leave Fredericksburg at 5 A. M.?

A. It was not. To the best of my recollection I know of no such case.

Q. How long have you been running a boat from the Rappahannock to Norfolk?

A. We have been doing it regularly for the last six or eight years—I think ten years—and before that we did it for a year or two. Eight or ten years regularly. Of course I am only speaking from recollection. I may be mistaken about that.

Q. Please state whether or not you had been requested to give a service which would put the people of the river in quicker communication with Fredericksburg than they had been by means of your Baltimore boats, prior to the time that the Tourist began to run on the Rappahannock.

A. Some four or five years ago we had a meeting of the Busines Men's Association here, and they wanted to put on a boat that would run from Fredericksburg to the mouth of the river; I told them it would not pay, because to go to the mouth of the river is an all-day trip and the boat would have to start very early in the morning and not get there until late at night, making all the wharves; that to do this you would have to have sleeping accommodations, and a large boat, and if they came up late at night and had to leave early the next morning, there would be no time for them to do any shopping here or attend to any business here, and that that would not answer. It was never suggested to me to put on a boat as far

down the river as Urbanna and that the people here would be satisfied with that. I would have done that willingly.

Q. Do you remember having some correspondence with the Business Men's Association of Fredericksburg, through a committee, in 1900?

A. I remember some correspondence—that is about the time I speak of—I think that was about the time.

Q. Do I understand you to say that the proposition, or the request of the Business Men's Association, was not for a boat to Urbanna?

A. It was to run down the river—as I understood it at the meeting we had—that was my recollection of it—to the mouth of the river.

Q. Do I understand you to deny that the request was for a boat to go to Urbanna and back?

A. That is not my recollection of it. My recollection is that it was to go down to the mouth of the river; that is what I have always understood. I may be mistaken, but that is my recollection.

233 Q. I understand you to say that you declined to put on the service requested by the Business Men's Association of Fredericksburg?

A. It was talked over there, and I think I made the proposition—I know I did at Norfolk, and I think I did to them—that if they would guarantee the expenses I would put on a boat. That is my recollection of it. It was simply a general meeting and a general talk.

Q. Were you present, or did you attend the meeting of the Fredericksburg Business Men's Association during the time that this matter was under discussion, since 1900?

A. I was never present but on one occasion. When that was, I do not remember. I have a recollection of meeting on one occasion, and talking the matter over, and I have no recollection of meeting them at any other time.

Q. Do you recall offering to put on a boat provided a certain amount, specified by you, was guaranteed to you to run the boat?

A. Now, I can not say positively, but that is my recollection of it; that in the talk—it was a loose talk that happened ten or twelve years ago, I think, and I can not remember all the details.

Q. I am asking you about matters that took place since 1900?

A. I have no recollection of that.

Q. Please state whether or not this is the estimate you made out at the time? (hands witness a paper.)

A. That is just what I was telling you about this boat—I told them if they would guarantee the expenses.

Counsel for plaintiff except to this line of examination as wholly irrelevant to the issues involved in the case.

Q. You have stated that the request, as you understood it, by the Business Men's Association of Fredericksburg, was for a service to the mouth of the river?

A. Yes, sir.

Q. Does you- correspondence indicate that that was the request

or that they were satisfied with a terminus higher up than the mouth of the river?

A. I don't know what my correspondence indicates; but I know that was my understanding of it.

Q. What does that letter say: (here hands witness another paper.)

A. It does not say anything about higher up than the month of the river.

Q. What is the character of that traffic handled by your boats over the wharves which you claim to own, and the wharves which you claim to lease?

A. It is all the traffic of the river, that we get.

Q. Does it consist of the general products of the country?

A. Yes, sir.

234 Q. Who are the shippers?

A. People who are receiving the stuff.

Q. People in the counties at large?

A. Not at large—in the interior—I don't know how they ship and I can not say who ships it.

Q. Do you or not receive as a common carrier, freights of the farmers, merchants and inhabitants generally, to be transported to other points?

A. Inhabitants who ship by the river.

Q. Is there or not any railroad on either side of the Rappahannock river below Fredericksburg?

A. There is no railroad, but there is a river on each side.

Q. What river?

A. Mattaponi and York on one side, and the Piankatank and all those creeks—Diamonds Creek and a whole lot of creeks on the other; and the Potomac river is not far.

Q. There is no general means of transportation for the country on each side, except by the other streams you mention?

A. And the sail boats. There is always a large number of sail boats plying.

Redirect examination.

By Mr. WILLIAMS:

Q. You stated in your cross-examination that you wanted to say something about the wharf situation at Tappahannock. Kindly state what that is?

A. Well, when we rebuilt the wharf at Tappahannock it was supposed cheaper by the wharf builder to put the wharf immediately alongside of the other wharf, so as to avoid the expense of pulling up the piles of the old wharf; and this was done and a large part of the timber was furnished by Mr. Wynn for doing it. It was never supposed or intimated that we had gone beyond our wharf lines. There was no boundary there, and this was put immediately alongside of the other one, and no one ever intimated that we had gone beyond the limit of our lot. After we had finished, and Mr. Wynn had furnished the timber to build it with his counsel, Mr. Aylett, wrote to me claiming the wharf as built on Mr. Wynn's property. There was a good deal of talk about it and rather than

have a law suit and trouble over it I gave Wynn two or three hundred dollars—I forget which—simply to avoid a law suit. Whether or not it was his property I don't know.

Q. Did he make a deed to you?

A. He did.

Q. Which deed is of record?

A. Yes, sir.

235 By the SPECIAL MASTER:

Q. Referring to the wharves which your company owns, or claims to own, will you please state which of them were built by your company, or its predecessors?

A. All of them mentioned were built by the company or its predecessors—those five wharves in litigation. In other words, Port Royal was built by the predecessors of the present company.

Q. Do you know in what year?

A. No, I do not.

Q. Was there a wharf at Port Royal prior to the time you built your wharf?

A. Yes, sir. No, we have built that property since the war. Taylor and Weems went down there and bought the old wharf property.

Q. Then there was a wharf there prior to the time you bought?

A. Which do you mean—the Weems Steamboat Company?

Q. Mrs. Forbes and Mrs. Williams?

A. There was a wharf there during the life time of their father.

Q. Did he build the wharf?

A. I think he did, immediately after the war. I think there was hardly a wharf on the river at that time. That was not in my day; but I think there was not a wharf on the river; they had all gone down. They bought the property and built the wharves.

Q. Out of this list of wharves owned by your company, were any of them built originally where no wharf had previously been?

A. All the wharves on the Rappahannock river that we own, were either built by the Weems Steamboat Company, Mrs. Williams and Mrs. Forbes who preceded it, or their father Captain Mason L. Weems, Theodore Weems and the Susquehanna Steamboat Company —they started it directly after the war. There was not a wharf on the river—nothing—it was a waste—and they built the river up and spent a great deal of money in buying these lots and building the wharves.

Q. Have any of these wharves been built, or can you identify any of these wharves as having been built, subsequent to 1874?

A. No wharf will last for that time.

Q. I mean as an original wharf?

A. The original wharves are all gone; they have been rebuilt; new wharves being placed where the old ones were, from time to time, ever since '74.

Q. I understand that. Now let me ask you that question again. I desire to know if any of these wharves to your knowledge have been built since 1874, where no wharf had previously been?

A. There was no wharf at Wellford's. We furnished the money

to build it and afterwards bought it. There was no wharf at Bowler's; we furnished the money; and we were interested in most of these cases and furnished the money. We built the pier
236 head at Bowler's, and made a present of it to the owner, to run it to shore.

Mr. FITZHUGH: He is asking you about those you own.

WITNESS: You don't want what we lease?

SPECIAL MASTER: I want what you own, first.

WITNESS: The wharves in litigation—the original wharf at Wellford's—there was no wharf there up to the last five or six years. That is the only new wharf of those owned by us that are in litigation.

Q. Then the other wharves had been built originally prior to 1874?

A. The only new wharf of the five, since '74, that we own, is Wellford's.

Q. When you built Wellford's did you apply for or obtain special authority to build what wharf, other than that residing in all riparian owners?

A. That wharf was built by the owner of the land, R. T. Douglas. I loaned him a thousand or fifteen hundred dollars to do it. Later on he said he did not want to own it and asked me as a favor to buy it, which I did, and I took from him a deed absolutely of the ground on which it was built. No authority was asked or obtained from the court or the legislature—simply the right of the riparian owner, so far as I know. I don't think he ever got any.

Q. Will you please state what was the arrangement existing between Mrs. Williams and Mrs. Forbes on the one hand, and the Baltimore & Susquehanna Steamboat Company on the other, as to the use of the wharves on the river prior to 1874—prior to the time that you bought out the interest of Captain Taylor?

A. Mrs. Williams and Mrs. Forbes did not own the property then; it came to them as the devisees of their father who died in '74. The arrangement between the Baltimore & Susquehanna Steamboat Company and the Weemes, was that the property should be held as tenants in common of the various lots. They bought lots on the river and took deeds in the joint names of Mason Weems, Theodore Weems and the Baltimore & Susquehanna Steamboat Company—or the directors—sometimes they were taken in the names of the directors as individuals, or in the corporate name. Mr. Weems died in '74 and the boats were pretty soon laid up, and before they started again we bought them entirely and they conveyed their entire interest in the wharves, and their boat.

Q. Do you know what arrangement existed at the wharves in which Mrs. Williams and Mrs. Forbes had no interest, as regards the owners of those wharves and the two steamboat lines?

A. The two steamboat lines were operated as one line. Before we bought them out they were operated as one line. They
237 had one agent, and the two boats were operated together; they divided profits and divided losses—at least one year they would alternate—one day was considered better than another and

they would change the days—but one agent acted for both. I can tell you about the whole thing, if you want me to.

Q. If you can make it very brief I should like to have it.

A. They started out one year Tuesday's boat out, and coming in Saturday was not considered as good a day as Friday's boat out and coming in Wednesday. They would change about, each one taking its own business, and they divided what they called the general expenses, wharf repairs, agent's fees, and all that—they were all divided but the expenses of each boat were kept separate, and the earnings of each boat were kept separate.

Q. Now in making settlements with the wharf owners, were the settlements made as a joint fund, or separate?

A. As a joint fund. The per cent. was charged against each boat as its earnings, and sent to one man as one line.

Q. I understand you to say that wharfage from any source has been declined at all times since 1874?

A. With the exception of a few years at Port Royal. They did collect some wharfage there under a previous arrangement, but a year or two after I took charge I stopped it, because I did not want it to look as though it were a public wharf, by charging wharfage; and we declined to receive it. We declined to let any boat come to it. If a friend wrote to us stating that he would like to get permission to load a boat there—as was the case for instance with Mr. Powell's and Mr. Thornton—we would give them the permission and charge them nothing for it.

And further this deponent saith not.

HENRY WILLIAMS.

NOTE.—By agreement between parties, by counsel, the signature of the witness is waived.

J. D. GARLAND, another witness introduced on behalf of the plaintiff, being first duly sworn, deposed as follows:

By Mr. FITZHUGH:

Q. Where do you reside, and what is your occupation?

A. I reside near Warsaw, Richmond County, Va. My occupation at present is lawyer. I practice law, but I have been Civil Engineer for 30 or 35 years. Educated as a civil engineer—not as a lawyer.

Q. You say that you are by education and profession a civil engineer?

A. Yes, sir.

238 Q. Are you by practice also a civil engineer?

A. I have been County Surveyor of my County for over thirty years. I have done much work in the Northern Neck, outside of my county.

Q. State whether or not you were employed by the Weems Steamboat Company to make plats or diagrams of the wharves in controversy in this suit; and if so, whether you made them.

A. I was employed, sir, and I made the surveys and diagrams or plats.

Q. I hand you what purports to be a diagram of the Bayport wharf. Please examine the same and state whether or not it was drawn by you, and whether it is a correct diagram of the Bayport wharf property. (Hands witness Exhibit #3.)

A. This was drawn by me. It is as nearly correct as it is possible to obtain it. There may be some omissions.

Q. Did you have any deed before you when you drew it?

A. Yes, sir.

Q. What deed was that?

A. From B. L. Farinholt to his wife.

Q. I now hand you Exhibit #4 filed with these depositions, which purports to be a diagram of the Monaskon wharf. Please examine that and say whether it was drawn by you, and whether it is correct, and whether you had the deed for the property before you when you drew it?

A. I remember that sir; I had the deeds. This is my map; I surveyed it and drew it.

Q. Is it correct?

A. As nearly so I think as anyone could obtain. I remember the deeds. There were several deeds in that matter.

Q. I hand you Exhibit No. 6, filed with these depositions, which purports to be a diagram of Bowler's wharf. Please examine it and state whether this diagram was drawn by you from the deed of the property, and whether it is correct?

A. There is a permit filed with this, I think, from the County Court, to some parties to establish a wharf at this point—a landing, something of the kind—and the Court accordingly permitted certain parties, Newbill and others, to erect a wharf in front of that land.

Q. Is that a correct plat?

A. Yes, sir.

Q. I now hand you Exhibit #8 filed with these depositions, which purports to be a diagram of Whealton's wharf. Please examine this diagram and say whether it was made by you and whether it is a correct diagram of the wharf property at Whealton?

A. This was made by me. I would like to state to the commissioner—you asked of me whether it is correct. By that I suppose you mean, absolutely correct. You will find in the drawing
239 of this map and others too, I have drawn little lines outside, indicating property not of the wharf as I conceive—lines shaded in yellow indicate the wharf property; outside of that yellow I did not regard as wharf property; but as other property and I was not as cautious in surveying that—I simply took the bearings of that, showing how far they jutted outside—they were oyster houses. With that exception it is correct.

Q. I hand you Exhibit No. 10, filed witth these depositions, which purports to be Naylor's wharf property, and ask you to examine it and state whether you drew this diagram and whether it is correct?

Mr. CARTER: I want to note an objection to the description on the map, of the road designated by the surveyor as a private road. That is a matter I will ask the commissioner to erase.

A. Of course I had to ascertain from the owners of the land as to whether—it was in the absence of any deed—I had no deed pertaining to a public road—I had no deed indicating a public road or private road.

Q. We are not asking you about the road, but simply about the diagram. Is there anything there about a road?

A. Yes, sir, I have marked it private.

NOTE.—Mr. Fitzhugh, at the request of the witness, scratched from the map the word "private," as indicating the character of the road.

—. ——.

A. Yes, sir, that map is correct.

Q. Did you draw that map from the descriptions in the deed to the property?

A. I can not remember. This wharf is on the property of Mr. Marx. He owns the property half a mile above, and may be half a mile below, and I don't think the records show anything about his location.

Q. I hand you Exhibit #11 filed with these depositions, and ask you to examine the paper, which purports to be a diagram of Wellford's wharf property. Please state whether you drew this diagram and whether it is correct?

A. I drew this diagram, and now I will have to explain. It is as nearly correct as any surveyor can get it. The deed calls for two acres of land laid out in the shape of a parallelogram at the foot; by an error clearly committed by Mr. Douglas in making the conveyance. This survey was not made anew at the time requested by the steamboat company, but was made more than a year since for my brother Garland, who has located a canning factory here, and
240 before it could be located I had to ascertain—by both the consent of the Weems Steamboat Company and the Wellford's—ascertain the piece of land intended to be deeded by Douglas to the company, and you will find that the plat here does not correspond exactly with the deed, because it is an impossibility.

Q. Is that plat accepted by the owners?

A. It was twelve months ago—by all parties.

Q. I hand you Exhibit #12 filed with these depositions, which purports to be a diagram of Sharp's wharf property. Please examine the same and state whether this diagram was made by you and whether it is a correct description of the property?

A. This diagram was made by me and it is a correct description of the property.

Q. Made in pursuance of the deed conveying the property?

A. Yes, sir, made in pursuance of the deeds conveying the property, and in pursuance of the surveys made by me prior to that. I surveyed and laid out this town originally, myself, before there was any wharf put there—as county surveyor.

Q. I hand you Exhibit #13 filed with these depositions, which

purports to be a diagram of Ware's wharf property, and ask you to examine the same and state whether you drew this diagram, and whether it is a correct description of the wharf property at that point?

A. I can simply say that I drew the diagram of the wharf called Ware's wharf, now belonging to Mr. Robert L. Ware, and this is a correct description of such wharf. I had no deeds from which to do this, he owning the land above and below.

Q. Was he present and cognizant of it?

A. His sons were there and directed me; and I surveyed from the pier head into the shore, and the surrounding lands.

Q. I hand you Exhibit #15 filed with these depositions, which purports to be a diagram or Tappahannock wharf property. Please examine it and state whether you drew the diagram, and whether it is a correct description of the wharf property at Tappahannock?

A. This is correct description, as far as I have been enabled to obtain it. I drew this diagram from a deed made for this property to the Weems Steamboat Company, in which deed is a copy of a map made by W. D. Carter, the County Surveyor, which I have copied here, and which I ran according to the deed. I find in that map the basis taken by Mr. Carter, the corner of Mr. Wynn, from whom the lot came. I took the bearing and the distance and I found both inaccurate, and it was difficult to take that as a basis. I then went to the iron pipe which was mentioned in the deed, and which was shown me by the owner of the land. From that iron pipe I measured
241 the distances and found they corresponded from the pipe with the survey made by Mr. Carter prior to that; and have laid off the land just as Mr. Carter I have no doubt originally laid it out. The only mistake is the bearing from Mr. Wynn's chimney is not the correct bearing laid down in the deed, nor is the distance correct. If that is correct, the iron pipe is incorrect.

Q. As I understand it, the Weems Steamboat Company had a wharf there before they acquired this piece of land from Mr. Wynn, and Mr. Carter only made a survey of a piece of land which Mr. Wynn has recently sold?

A. That is it.

Q. Then explain, please.

A. You will find indicated on this map approximately, the streets one street above this wharf, some distance—40 or 50 yards perhaps—which I have designated as Main street—I had to obtain from the citizens; the deeds pertaining to the wharf do not mention any street whatever, and I had to obtain from the citizens there—if it is a mistake, it is a mistake of the citizens, or mine, one. On the lower side there is a street called Prince street. I measured from the iron pipe for Mr. Winn—at his request—the distance to this Prince street. He was with me and carried the end of the chain. I found the distance 7 poles and 18 links to the corner of the street called Prince street. He named the street—not I—and I put it on the map, within 50 or 60 yards below the wharf property. The wharf property, which I am willing to swear to, is indicated on all my maps by shaded lines. Anything outside of that is simply as a reference to locate the wharf.

Q. I want you to explain still—and I repeat to you that Mr. Carter, as I understand it, only made a survey of that piece of land which the company—Weems Steamboat Company—recently acquired from Mr. Wynn?

A. Yes, sir.

Q. But long prior to the acquisition of this piece of property the Weems Steamboat Company owned a wharf at Tappahannock?

A. Yes, sir.

Q. Now does your plat embrace the piece bought from Mr. Wynn, and the original wharf?

A. No, sir, you can't find that. I had this difficulty: I found the piece of land embraced in the deed I have alluded to, made some few years ago—in '95, I think—and the survey made by Mr. Carter. This map is a copy of his survey and a correct map of the land he laid out. Besides that, I was under the impression from the deeds—I knew there was some other land, but the landmarks were washed away. I took the Commonwealth's Attorney, and went to the clerk's office—outside of this matter. I examined the records with the clerk, and I could not find any data from which to establish the property which all agreed was above this property. All the
242 old citizens in Tappahannock know of a wharf that was there, and this wharf property belonging to some Susquehanna Company, I believe, above this property conveyed to the Weems Company.

Q. By whom? By Mr. Wynn, was it not?

A. By Mr. Wynn. This is simply a diagram of the property from Mr. Wynn. Now there is property there, but I can not find it, nor do I believe anybody else can.

Q. Do you mean to say that all the wharf property now used by the Weems Steamboat Company, which is apparent to the natural eye, at Tappahannock, is in front of the small parcel of land sold by Mr. Wynn in '95 to the Weems Steamboat Company, and surveyed by Mr. Carter?

A. My impression is that there are other lands higher up the river, belonging to the Weems Steamboat Company, than the map shows, or that was conveyed by Mr. Wynn.

Q. You have not yet answered my question. The wharf is a visible, tangible object, being attached to the banks of the Rappahannock river, and extending out into the river, to navigable water. Does or does not that wharf property, thus visible, lie exclusively in front of the piece of land sold by Mr. Wynn to the Steamboat Company recently?

A. Certainly. In front of this piece of land shown here—exclusively in front.

Q. Please examine the paper now handed you marked Exhibit #24 filed in these depositions, which purports to be a plat of the parcel of land conveyed to the Weems Steamboat Company by R. E. Wynn and wife, by their deed of the 10th day of October, 1895, filed as an exhibit with the plaintiff's bill in this cause, which plat purports to have been made by William D. Carter on October 7, 1895, and state whether or not you had this plat and deed before you

at the time you made the diagram which you now hold in your hands?

A. I never had this, sir.

Q. Did you or not have that deed of Wynn and wife before you?

A. I did, sir. This map is a part of the deed.

Q. Then you have seen the original, of which this is a copy, have you?

A. Yes, sir. This appears to be the original, of which the plat is a copy. This is not correct.

Q. You now state that the plat which I handed you, made by Mr. Carter, appears to be the original plat, and that the said original plat is copied in the deed of record at Tappahannock, which you examined?

A. Yes, sir.

Q. Now, do I understand you to say that Mr. Carter's plat of the piece of land sold by Wynn and wife to the Weems Steamboat Company, is not a correct plat of said land thus sold?

A. The plat of the land is correct. The data from which
243 he drew the plat—a portion of the plat—I don't know how you would separate it—is incorrect. Can you understand that explanation?

Q. I can not.

A. The iron pipe from which Mr. Carter made the survey, if it is at the correct place his map is correct. If the iron pipe is at the proper place, Mr. Wynn's house has moved 25 yards down the river since then.

Q. Then is or is not Mr. Carter's plat a correct plat of the piece of land sold to the Weems Steamboat Company?

A. As a whole his map is incorrect. The quantity of land—the bounds of the land—I have no doubt is correct. The location of the land is absolutely incorrect.

Q. Does your diagram locate the land correctly?

A. Yes, sir.

Q. Does your diagram correspond with the description in the Wynn deed, or is it different from the description in the Wynn deed?

A. Exactly as in the Wynn deed, except as to location.

Q. Please explain the error of location?

A. The bearing from Mr. Wynn's corner is not correct. I can give you the bearing if you wish.

Q. That would not convey any idea to me at all. Is the land not at the point on the river that the map describes it?

A. The land is at the point on the river as the map describes it, both in Carter's and my map.

Q. Then how does your location differ from Carter's location?

A. Because Mr. Carter starts from Mr. Wynn's corner dwelling house, and runs a certain bearing and a certain distance—both bearing and distance are inaccurate, and he does not locate the house properly from the lot.

Q. Which is located improperly, the house or the lot which Wynn sold to the Steamboat Company?

A. Evidently the house.

Q. Then the lot is correctly located?
A. Yes, sir.
Q. You just stated that the lot was not correctly located?
A. On that map of his.
Q. They I am to understand that in making a plat of this parcel of land sold by Wynn and wife to the Weems Steamboat Company, both you and Mr. Carter started from Mr. Wynn's house and ran your line to an iron pipe; Mr. Carter you claim having an erroneous bearing between the Wynn house, and that iron pipe and not giving the accurate distance of the Wynn house from the iron pipe. Is that the error in Mr. Carter's survey that you have been talking about.
A. Yes, sir, that is the error.

NOTE.—The further taking of these depositions was here adjourned and continued to to-morrow (Thursday) morning, August 6, 1903, at 10 o'clock.

244 COURT HOUSE, FREDERICKSBURG, VA.,
THURSDAY, *August* 6, 1903.

The further taking of these depositions was resumed this morning at 10 o'clock, pursuant to adjournment on yesterday.
Present: Mr. Fitzhugh, Mr. Williams, for plaintiff; Mr. Carter, for defendant.

The examination of the witness, J. D. GARLAND, was resumed, as follows:

Direct examination continued by Mr. FITZHUGH:

Q. Both in your plat and in Mr. Carter's plat the Weems Steamboat Company's wharf appears to be about the center of the river front. Is it a fact that said wharf is about the center of the piece of ground which you surveyed, and which Mr. Carter surveyed?
A. It is a fact.
Q. Is there any evidence of an older wharf at Tappahannock, which is above the piece of ground you surveyed?
A. Yes, sir.
Q. What is that evidence?
A. Just above the present wharf—there is an old wharf—the piles of an old wharf—I hardly know the distance, but not far; perhaps not more than 12 or 14 feet above the bridge-way to the pier head—portions of the pier head out there now, nearly contig-ous to this present pier head, up the river. I am sure the survey embraced both the old wharf and the present wharf too.

By SPECIAL MASTER:

Q. Your survey you mean?
A. Yes, sir, my survey and Mr. Carter's too.

By Mr. FITZHUGH:

Q. There was some question as to whether on the Tappahannock diagram you had given the correct names of the two alleged streets which bounded this parcel of ground where the wharf is. Mr. Bayard Wright stated that according to his knowledge of the names of the streets of Tappahannock, that the street below this was Main street, and that the street above this wharf was Prince street. Now you have marked on your diagram the street below the wharf
245 Prince street, and the street above the wharf Main street. Mr. Wright was very confident from his nine years' residence in Tappahannock that the street below the wharf was Main street. Now what have you to say about it?

A. It is very possible that I made a mistake. The records by which I was governed in making the survey I think nowhere mentioned a street. My information had to be obtained from citizens in the town.

Q. Then you don't mean to say that the street on the south of this wharf is Prince street?

A. No, sir, it is simply marginal, and no part really of the survey.

Q. Now I hand you Exhibit #16 filed with these depositions, which purports to be a diagram of Port Royal wharf property. Please examine this diagram and state whether it was made by you and whether it correctly describes the wharf property?

A. This diagram was made by me and correctly describes the wharf property.

Q. Why did you undertake, in preparing a plat of this wharf property, to also make a diagram of the village of Port Royal? That was unnecessary was it not?

A. No, sir, it was not unnecessary. I had to ascertain the corners of the lot that was conveyed to the Weems Company, and while the deed from a man named Thornton called for a certain stone, Thornton was with me when I made the survey and objected to the distance that I came on this road that you see laid down as a part of the town. I then went to the mayor of the town, and obtained from him a copy of the records of the town itself in which these streets and the road were laid off, and I undertook to ascertain the corners from that direction. That accounts somewhat for the mapping of the town.

Q. Please examine deed of the 25th of April, 1866, between Christopher Grammar and others, and Jacob Tome and others, and state whether or not you used this deed in making your survey of the Port Royal wharf property?

A. Yes, sir, I used this deed.

Q. I hand you Exhibit #21 filed with these depositions, which purports to be a diagram of Carter's wharf. Please examine it and state whether you made it, and whether it is correct?

A. Yes sir, I made it and it is correct.

Q. Where did you get the information that enabled you to locate that wharf?

A. I got it from the records of my county.

Q. Please state whether or not you have for sometime been counsel for Mr. Carter and his estate, and whether or not that relation has rendered you familiar with this property?

A. I have been his counsel for twenty years, and I sold him that land, sir; a portion of that land. Yes, sir I am thoroughly familiar with it.

246 Q. Please examine the paper handed you marked Exhibit #19, filed with these depositions, which purports to be a lease from M. A. Carter to the Weems Steamboat Line, of Carter's wharf, and state whether you are acquainted with Mr. Carter's handwriting, and if so, whether this signature is his genuine signature?

A. I am acquainted with his handwriting, and that is his genuine signature.

Q. I hand you a paper marked Exhibit #22 filed with these depositions, which purports to be a diagram of Judge Evans' wharf, Waterview. Please examine it and state whether you made it and whether it is correct?

A. Yes, sir, I made this diagram and it is correct.

Q. I hand you a paper marked Exhibit #23 filed with these depositions, which purports to be a diagram of the Leedstown wharf. Please examine this diagram and state whether you made it, and whether it is correct?

A. Yes, sir, I made this diagram, and it is as near correct from the description of the property as I can obtain it.

Q. Where did you get the description of the property?

A. From the deeds and from evidence of the older inhabitants there as to the land.

Cross-examination.

By Mr. CARTER:

Q. You state that the map of Leedstown wharf is as near correct as you could get from the records and statements of the older witnesses you could find. Please state whether or not you made the plat from the statements of witnesses and the narration of deeds, or from a survey?

A. I had no survey to be governed by.

Q. Did you or not survey the lot purporting to be the property of the Weems Steamboat Company, and the pier head at Leedstown?

A. Yes, sir.

Q. In drafting the plat from your notes what scale did you use?

A. I do not remember, sir; it was a large scale—I don't remember whether it was 20 or 40—I don't know that I marked it on the plat. you can ascertain it by measuring it.

Q. I want it from you, sir.

A. Well, it is about two poles to the inch, I judge—I could not swear positively.

Q. I understand you to say that you used a scale of two poles to an inch?

A. I would judge so.

Q. I would then understand from this plat that it is about two poles from the front of the store in which Mr. Baxter says the post once is kept, to the other side of the road?

A. If you will allow me to use the notes I took—the field
247 notes—I will give you the distance exact. (Witness here refers to his notes.) From Smoot's store to the side of the road towards the river—I was simply told by the citizens that that road was a public road—I don't know myself whether it is or not—Smoot's store was on the road, on the upper side, and I took thirty feet, as the law in our State provides, and measured off thirty feet for the road, and then measured the distances from Smoot's store down to the wharf and out to the edge of the pier head. I have all those distances here—5 poles from out to out; 2½ poles from there to the beginning of the pier head. The pier head is very narrow there.

Counsel for plaintiff except to so much of the preceding answer as undertakes to state what people told him about a road in the vicinity of the Leedstown wharf being a public road.

Q. Then I understand the figures 10 poles, 12 links, upon the plat, to indicate the entire distance from the outside of the pier head to the front corner of Smoot's store?

A. Yes, sir.

Q. What county is Leedstown in?

A. Westmoreland County.

Q. Is it or not an incorporated town?

A. That I don't know, sir; I don't think so.

Q. Does or not Westmoreland county immediately adjoin Richmond County?

A. Yes, sir.

Q. Are you or not familiar with the roads of Richmond and Westmoreland County?

A. Not of Westmoreland County. I am of Richmond County.

Q. How many stores are there at Leedstown?

A. Smoot's store is in Leedstown; Mr. Baxter's store is near Leedstown, I suppose; it is not far from Smoot's.

Q. How far are the stores apart?

A. Not more than 150 or 200 yards; I did not measure that.

Q. You say 150 or 200 yards?

A. I don't know; I won't answer that question.

Q. Are they not much nearer than that together?

A. I don't know, sir.

Q. Note upon your plat Smoot's store and land is the description written upon the space lined off in immediate proximity to the store which Mr. Baxter has designated as Smoot's store. You have marked the figure "Smoot's store and land." Does the store occupy the location shown by the small diagram?

A. The figure marked store represents the location of Mr. Smoot's store.

Q. From the plat the distance from the river side of the road to

the warehouse at the pier, would appear to be about 80 or 90
248 feet in proportion allowing 30 feet for the road. Is it that far?

A. The distance from Smoot's on the opposite side, to the outer edge of the pier head, is south 1½ East 10 poles and 12 links; by my notes. Take 30 feet from that 10 poles and 12 links, and you will have the exact distance from the southern edge of the road to the front of the pier head.

Q. Please give the distance then from the inshore end of the pier to the outshore end?

A. One pole and nine links, the width of the wharf, and 32 feet in addition.

Q. Will you please calculate and state in feet the distance from the river side of the road marked on the plat "To Oak Grove," to the inshore of the warehouse?

A. Yes, sir, it is about 100 feet, approximately.

Note by Mr. CARTER:

Counsel for defendant object to the designation on the plat as a private way. Upon the map where "private way" is written, cart tracks and wagon tracks are plainly indicated in the sand, beginning at the road to Oak Grove, and leading directly to the wharf.

Q. Is there or not any obstruction between Smoot's store and the wharf, of any character?

A. Directly none, sir.

Q. Where is the warehouse located?

A. The warehouse is located between the pier head and the road leading to Oak Grove, adjacent to and touching the wharf.

Q. The situation there is deep water inshore?

A. Yes, sir, I measured it and it was very deep.

Q. You state that at Tappahannock you observed old piling within a few feet of the present wharf, just above. State whether or not you observed still other old piling, indicating by their condition of decay a still earlier wharf, still above?

A. I do not remember, Mr. Carter, I don't think so. I only noticed one wharf there.

Q. You have laid down upon the plat of the Tappahannock wharf a section of the street above and below the wharf. Please state whether or not the old pier head, the piles of which you say are now in the river above the present pier head, would be in front of the street if the lines of the street were prolonged?

A. I think not. I did not go to that street, so I can not tell you. I think not, though. The street is above or in front of the pickle factory. I did not go there. I had no business there.

Q. Have you laid down with reasonable accuracy the direction of the streets, the sections of which you have marked on your plat?

A. I think so. I have the bearing. The bearing of one street is given—Prince street; you call it Main street.

249 Q. Did you with reasonable accuracy plat the bearing and distance of the present wharf with reference to the shore and

the lot obtained from Mr. Wynn by thee Weems Steamboat Company?

A. I took the bearing of the wharf. I ran according to the deed.

Q. Then can you with rule and scale ascertain how much space there is between the upper corner of the present pier head, and the south side of the prolonged line of the street above the present wharf?

A. I could not, except by triangulation. I have a book here that I could soon calculate it by taking the bearing of the street and ascertain how far that street, if projected, would be from the southern end of the wharf.

Q. Could you not lay your plat upon a drawing board, prolong the line marking the southern side of the street shown above the present wharf; prolong that line beyond the location of the present pier head, as shown on your plat, with your compasses and scale measure, and declare the distance between that street and the present pier head?

A. Yes, sir, I could with a projection and protracted scale and compass and dividers.

Q. Can or not the same measurement be made by any competent surveyor who understands the use of platting instruments?

A. I think so, sir.

Q. Is or not the present wharf structure built in a somewhat different direction from the direction of the old wharf, the piles of which are still visible?

A. I judge from present appearances that the wharf builder started as near as he could at the shore.

By the SPECIAL MASTER:

Q. Which wharf builder?

A. The last wharf builder, for the Weems Steamboat Company—as near as he could south of the bridge of the old wharf, and attempted to construct the wharf so that the pier head of the present wharf would be just below the pier head of the old one, to avoid the old piles being in the way.

By Mr. CARTER:

Q. What is the size of the present pier head at Tappahannock?

A. The width of the pier head is 2 4-5 poles.

Q. Please state that approximately in feet?

A. 39.6 feet.

Q. I understand you to state that the old pier head is some feet above the present pier head?

A. I think the old pier head runs into the present pier
250 head—just up with it and touching it almost—as near as they could get. The southern end of the old pier head, as the piles there indicate, is just under the northern edge of the present pier head.

Q. In examining the records there at Tappahannock, you stated that you could find no record at all showing the location of any other lot on the shore at Tappahannock which you thought to be the property of the Weems Steamboat Company, did you not?

Counsel for plaintiff except to this question because it is not competent for the witness, nor is it relevant, for him to testify as to examination of records touching the title of the Weems Steamboat Company to other property than that which he platted.

A. I found records to convince me that there was other property belonging to the Steamboat Company, but that it could not be defined.

Counsel for plaintiff excepts to the answer for the reasons above stated.

Counsel for defendant insists upon the admissibility of the question and answer excepted to, on the ground that counsel for the plaintiff questioned the witness on yesterday along the same line, in direct examination, and inquired of the witness the reason why the plat made by him as surveyor for the plaintiff, showed only the lot conveyed to the Weems Steamboat Company by deed from Wynn and wife.

Q. What is the character of the shore at Tappahannock as far back from the water's edge as the back line shown on your plat, and bounding the lot purporting to have been conveyed to the Weems Steamboat Company from R. E. Wynn and wife and others?

A. Well, sir, it is a sand shore chiefly, open.

Q. Please state whether or not in laying down upon your plat the location of sections of the streets above and below the present wharf, you mean to say that the streets in fact stop short of the river shore, as the lines upon your plat would indicate?

A. I do not regard the streets, or parts of streets shown upon the map as being a part of the survey. I did not survey any street in Tappahannock. I only took the bearing of the street marked Prince street (but now supposed to be Main street) near Mr. Wynn's house, the western side of the street. The property conveyed to the steamboat company is some distance from any street. I had no occasion to survey the streets to ascertain that property.

251 Q. Then I understand you to say that you do not know, and do not intend by your plat to indicate, that the streets above and below the wharf stop short of the river shore?

A. No, sir, I do not intend to indicate that they stop short, or that they are absolutely correct upon this drawing.

By the SPECIAL MASTER:

Q. Is it to be understood from your testimony that in making the various plats shown in exhibit herein, that you personally surveyed all the wharf properties named therein?

A. Yes, sir.

Q. And within what period of time—recently?

A. From the 1st to the last of June. I commenced, I think on the 3rd of June.

And further this deponent saith not.

J. D. GARLAND.

NOTE.—By agreement between the parties, by counsel, the signature of the witness is waived.

NOTE BY COUNSEL FOR PLAINTIFF:

Mr. Williams, of counsel for the plaintiff, at this point offered to Mr. Carter, as president of the People's Steamboat Company, two checks drawn to the order of Robert L. Ware; which checks had been sent to Mr. Ware by the People's Steamboat Company as wharfage for the use of his wharf; and which checks Mr. Ware testified he had received but never used, and desired them returned to the People's Steamboat Company.

NOTE BY COUNSEL FOR DEFENDANT:

Mr. Carter declines to accept the said checks, except from Mr. Ware. They are not part of this proceeding, and counsel for defendant object to that matter coming into the evidence.

Note by the SPECIAL MASTER:

In my opinion this matter has no bearing upon the questions upon which evidence was directed by the court to be taken, and returned.

252 A. B. EVANS, being next introduced on behalf of the plaintiff, and first duly sworn, testified as follows:

By Mr. FITZHUGH:

Q. Please state where you reside, and your present occupation?

A. I reside in the County of Middlesex, this State; my present occupation is that of a lawyer chiefly, and of a farmer.

Q. Please state whether or not you are the owner of the wharf property on the Rappahannock river in Middlesex County, known as Waterview?

A. I am, sir.

Q. State whether or not said wharf is built upon land owned by you?

A. Yes, sir.

Q. State when you built that wharf?

A. In the year 1880.

Q. Please state when you acquired the fee simple ownership of the land upon which you built that wharf?

A. Some year during the seventies, but I am not prepared to state definitely.

Q. Please examine deed now handed you, bearing date on the 20th of November, 1874, between Jacob Tome, assignee in bankruptcy of James W. Fisher, and Thomas Croxton, trustee, to you, and state whether it was under that deed you acquired the land upon which you built this wharf?

A. Yes, sir, it was.

Q. Please examine the paper now handed you marked Exhibit #18, filed with these depositions, and state whether that is an existing contract between you and the Weems Steamboat Company?

A. It is, sir.

Q. Please examine the paper now handed you marked Exhibit #22, with these depositions, and state whether or not it is a correct diagram of your wharf property, Waterview?

A. It seems to be, sir.

Q. In the contract between you and the Weems Steamboat Line you state that whereas the contract between said Williams and Evans consists only of letters above referred to bearing date in the years '79 and '80, and it is mutually desired by the undersigned that a contract shall be drawn, signed and executed in more regular and specific form—is this contract which you all executed at a recent date, in 1901, the same agreement which has existed since '79 or '80, in reference to this clause: that during the continuance of this contract no steamers except those owned or controlled by the Weems Steamboat Company shall have the privilege of using said wharf, without the consent and approval of the president of said company?

A. No, sir, that was never contained in the contract prior to the date of the contract in 1901.

253 Q. Was there any stipulation prior to this contract as to the exclusive use by the Weems Stemboat Company?

A. No, sir.

Q. You state that this wharf was erected about 1880. Why did you erect it?

A. Well, sir, because I had recently become the owner of five hundred acres of land down on the river, and I was influenced by the desire primarily to enhance the value of my real estate on the shore, and likewise to afford facilities for the shipping of produce of that section of the country. And I was induced to do it further by the consideration that Mr. Henry Williams representing the Weems Steamboat Company, assured me that if I would build the wharf far enough out into the river for his steamers to reach the wharf, that he would send them to the wharf, and that he would pay me a commission on the freight and passenger money; and afford me other advantages which are expressed in the recitals of this contract. I was influenced to do it mainly by the consideration that Mr. Williams gave me these assurances and offered to me these inducements.

Q. Do you collect wharfage from any other river craft except the Weems Line, at your wharf?

A. I never have by any active agency of mine, collected any wharfage at all, with the exception probably of some wharfage that I demanded compensation for from one or two sail vessels antecedent to the date of this contract. Since the date of this contract the president of the Tourist, or People's Line of steamers, Mr. Carter, wrote me a letter during the latter part of the year 1902, stating in that letter that he understood I was the owner of that wharf, and sent me a check for about ninety cents, I think. Remembering the clause in the contract that concludes the contract between Mr. Williams and myself, I at once forwarded that letter to Mr. Williams, and informed Mr. Williams of the fact that I had received this letter from Mr. Carter, and because of this concluding clause in the contract I felt it was my duty to inform Mr. Williams that the Tourist was landing freight at my wharf, and that I wanted to assure him that I had given no encouragement to the Tourist to do so; and that I had given no instructions to my agent on the wharf to meet the Tourist or to assume any responsibility in connection with the

freight. This little check remained in my hands for several months, I believe. I lost it for awhile; and finally I used it. I sent it down along with some other checks I had to be deposited to my credit in a local bank there, of Middlesex. Then later on during the present year the treasurer of the company, Mr. Howard, sent me a check for some two or three dollars, which represented the commissions on the freight for the time after the 1st of January, and
254 I utilized that check in the same way. But I did this—I made use of these checks without any knowledge on the part of Mr. Williams, and Mr. Williams don't know it to-day. I did it for the reason that the checks were forwarded to me, and I did not propose to take a hand in any litigation that might grow out of the use of the wharf by this People's Line.

Q. Then I understand that the People's line was using your wharf without your consent, and tendering this compensation, and you took it?

A. Yes, sir, that is exactly the meaning of it.

Q. What per cent. of the traffic over your wharf is carried by the Weems Steamboat Company?

A. I presume that ninety-nine one-hundredths of it—and even a greater proportion than that, I expect.

Cross-examination.

By Mr. CARTER:

Q. You state that you received a small check from the president of the People's Steamboat Company in a letter stating that it was for wharfage in 1902, and that after a certain time and certain occurances which you have stated at length, you used that check. You have also stated that you received in 1903 a further check for several dollars from the treasurer of the company. Please state whether or not you have received checks from the treasurer of the People's Steamboat Company for the first two quarters of 1903, paying the wharfage up to July 1, 1902?

A. I do not remember, Mr. Carter, to have received but one check for the year 1903. I don't know whether that check covered the two quarters, or was for the second quarter of the year. I do not remember whether I have or not—I rather think though that I have only received the two checks referred to in my answer and in your question.

Q. Then do I or not understand you to admit that you have received wharfage from the People's Steamboat Company up to July 1, 1903?

A. Well, as I answered before, I can not state definitely whether that covered the period up to July 1, 1903, or not.

By Mr. FITZHUGH:

Q. Was the check for wharfage received after July 1st?

A. I really cannot state from memory.

Q. This is just August, you know—you know whether you received the check last month, don't you?

A. I rather think it was before the first of July.

255 Mr. CARTER: I will state to Judge Evans that two checks were sent him during 1903.

WITNESS: I have accepted and utilized every check I have received; but I don't remember whether they were two or three in number, I don't remember. I will not deny it at all.

By Mr. CARTER:

Q. I understand you built Waterview wharf in 1880 to enhance the value of landed property which you own on the Rappahannock river, and for the purpose of making an outlet for the traffic of that section of the country. Were those the objects with which you built the wharf?

A. Those, together with the additional object I stated, the inducements offered to me by Mr. Williams, as set forth in this contract.

Q. Would you or not have built the wharf had the inducements which you say were offered by Mr. Williams, been extended by any other line then operating as Mr. Williams was, on the Rappahannock river?

A. It would depend very much on the inducements held out by this other line. I don't think there was any other line at that time operating on the river—in 1880.

Q. (Question repeated.)

A. I reckon I would, sir.

Q. Will you please state the character of the traffic carried on over *over* Waterview wharf?

A. Well, it is in the reception from the shore, of the merchandise owned by the merchants in the vicinity, and the products of the land in the back country on the one side, and such freight as is usually brought from Baltimore to the country by these lines of transportation.

Q. To whom is the freight that is brought in, consigned?

A. I suppose, sir, to the purchasers of the property from the city of Baltimore. They are consigned to the different persons who use the boat to bring their freight from the city of Baltimore, for the most part, and from all other points along the line.

Q. Then do I understand you to state that the consignees who receive freight over your wharf are the public generally, who make purchases in the cities and have freight shipped to them?

A. That is my understanding of it, sir.

Q. Will you please state what compensation you exacted as wharfage from the sailing vessels which you stated you required to pay wharfage for the use of your wharf?

A. I don't think—it was agreed upon just between the merchants and myself, without any reference to a percentage, that I was to receive; specific sums were agreed upon between the merchants and myself.

256 Q. Will you please state what compensation you exact from Mr. Williams for the use of your wharf by the Weems Line Steamers?

A. Well, it is set forth in this contract very definitely. It is not only stated to be ten per cent. commission upon the freights and passage money, but likewise there are other inducements which are set forth in the recital to this contract, and in the contract itself. For instance I get passage over the steamers for my wife and myself. I get passage likewise for my wharf agent; and in addition to that I get an annuity in lieu of other arrangements made antecedent to the date of this contract, of twenty-five dollars—all as set forth in this paper.

Q. In what way was the produce of that section of the country shipped out, prior to the erection of Waterview wharf?

A. Well, sir, there is a public road that leads down to within about half a mile of my wharf and turns to the left at right angles, and passes through my farm of 500 acres, on down to Parrott's creek, where there is a public landing which is about half a mile or three-quarters of a mile above my wharf; and the citizens or inhabitants of that section of the country had this way of carrying their produce to the creek; and very many of them used to carry their produce across to Monaskon wharf on the Lancaster shore. Persons living out in the country as far as my home were about as near to Bayport, over a public road, as they are to my wharf now, Waterview, and a good many persons would carry their produce to Bayport. Others would carry their produce to Urbanna, which is about eight or nine miles from the public thoroughfare through the county, to my home.

Q. You speak of your home. Will you please state how far your residence is from Waterview wharf?

A. I think about six miles.

Q. You have stated that the public road runs through your land to the public landing below the mouth of Parrott's creek.

A. Above the mouth of Parrott's creek; the public landing is on the creek, and it makes the public landing some several hundred yards above the mouth of the creek.

Q. On the creek?

A. Yes, sir.

Q. Will you please state the depth of water in the creek, between the mouth and the public landing you speak of?

A. Well, I think, sir, the water is probably about five feet deep at the entrance, or mouth of the creek. It is of greater depth after you get into the creek, but five feet, I think, is about the depth of the water at ordinary high tide. That is the information I have on the subject.

Q. About how much does the tide rise and fall at Waterview, on the average?

257 A. Well, I can tell from a very sad experience resulting from the requisition on me to substitute new piles in the wharf. I think the average difference between low and high tide is about 18 inches or two feet.

Q. You speak of a road from the public road to your wharf—how long is that road?

A. I think about half a mile—it may be a little over. That is on

my property—on my land. The road leads right along down on the land dividing the Inglewood farm, of which Judge Montague died seized and possessed, and the 500 acres which I bought in '74, and when I built the wharf I just drew my fence in about 20 feet, leaving a 20 foot roadbed from this angle in the public road to which I have referred, right down to my wharf. The roadbed is mine absolutely.

Q. Is there or not any gate or other obstruction upon the road which you described as having been opened by you from the angle of the public road, to your wharf?

A. No gate, and there is no necessity for it, from the fact that I just drew in my fence and left the road outside of my enclosure; and since what is called the "No Fence Law" has been in operation, no fences or gates are needed at all.

Q. Is or not the pier head at Waterview in the navigable water of the Rappahannock river?

A. Well, it is in water that is ten feet deep at ordinary high tide.

Q. How long is the bridge or approach to your pier head, from the shore?

A. Well, sir, judging from the number of cap-sills on the piles, which are apart from each other about ten feet, I have always regarded it as being 1,750 feet. The encroachments of the tides and the effect of the waves under the pressure of the winds, &c., has washed away a good deal of the embankment since I built it.

Q. You have stated that you acquired the property in '74 and built the wharf in '80?

A. Yes, sir.

Q. I understand you to state that prior to the year 1901 there was no exclusive privilege in favor of Mr. Williams or the Weems line, as regards the use of your wharf. Please state whether or not this is a fact?

A. No, sir, there never was any such provision in the contract between Mr. Williams and myself at all of a kindred character to that which is suggested in the latter clause of this contract, until 1901, and the character of that provision of course is explained by the terms of the clause itself. I simply undertook to say that I would not give my consent.

Q. Will you please state about what time you made the road from the angle of the public road, to Waterview wharf?

A. In the year 1880, just as soon as the wharf was completed. I had a store house built down there and I had a post office established
258 there, and I just drew my fence back and gave the use of that roadbed, simultaneously with the completion of the wharf.

Q. To whom did you give the use of the roadbed?

A. Well, there was no dedication of it at all, and I just gave the public to understand that they might come in, but I always regarded that I had the right to close the roadbed at any time and to discontinue the wharf, as this contract very plainly implies.

Q. You state that you had a store built and a post office estab-

lished. Please state whether or not the post office is kept in the store?

A. Yes, sir.

Q. Please state where the storehouse is located?

A. I suppose about 75 yards from the abutment of the wharf.

Q. How far is the storehouse from the road which you say you opened to the wharf?

A. Well, the road leads down to an open space in which the storehouse was built, I suppose of an acre or more.

Q. To what use is this open space of an acre or more put?

A. Just to any use the merchant who is conducting business there chooses to put it, and of course persons bringing their produce down there or coming to receive their freight, they have access to the foot of the wharf.

Q. Is there or not any other road leading to the wharf, than the one you have described?

A. No, sir, none at all.

Q. Please state how the post office at Waterview is served? I mean how does it get and send away its mail?

A. There is an overland mail that is brought down from the back country and received by the postmaster, or deputy postmaster (I am the postmaster, I believe, sir, nominally). And it is distributed there; if there is any mail for the steamers to carry it has heretofore been carried by the merchant or his clerk doing business there, without any compensation from the United States Government. Through the agency of Mr. Jones, a messenger or mail contractor has been employed by the Government, to carry the mail to the steamers.

Q. By what route does the merchant or the mail messenger carry the mail bags from the storehouse to the steamer?

A. Just over the roadway that leads from the store to the pier head.

Q. Out over the bridge?

A. Yes, sir, over the bridge.

Q. By what route—I mean over what roads is the mail from the interior of the country brought to the post office at Waterview?

A. Over the public road that leads from Churchview, the post office at which the mail is received, down to Waterview.

Q. Then I understand it travels the public road you speak of to the angle you have mentioned?

A. Yes, sir, and then it passes over this private roadbed of mine, down to the wharf.

259 Q. When was that post office established?

A. I think very shortly after the wharf was built, sir. I can not state definitely, but certainly within a year or two—known as the Waterview Post Office.

Q. How long has the mail service from the back country been established?

A. Well, that has been of very recent date. I could not tell you exactly, though Mr. Carter probably some six or eight years.

Q. Has it not been rather longer than that?

A. I could not tell you definitely.

Q. How was the post office served prior to that time?

A. Prior to the establishment of the overland route?

Q. Yes.

A. Well, I think, sir, that the mail was just brought from the steamer to the storehouse; but I can not state definitely with regard to that.

Q. I understand you to state that there has been a post office at Waterview known as Waterview, since a year or two after the war.

A. That is my recollection of it, sir, but then the records of the Post Office Department will give you definite information about that.

Q. Will you please state how Waterview Post Office was served from the time of its establishment in '66 or '67.

A. You mean '86 or '87?

Q. I understood you to state that the post office was established a year or two after the war.

A. The wharf was built in 1880.

Q. You said wharf, then, instead of war? I understood you to say it was established a year or two after the war.

A. No, sir, after the wharf was built. I made no allusion to the war.

Q. Then do I understand you to state that there has been a post office there by the name of Waterview, and maintained by the United States Government, since the year '81 or '82?

A. I can not state that definitely, because my memory is not definite upon the subject. I can not tell you when the post office was really established.

Q. I understood you to refer to piling in your wharf. Is the bridge to the pier head a structure consisting of piles driven into the mud bottom, with cap-sills, joist and floor placed upon that?

A. Yes, sir, from the shore out to the pier head, a distance of about 1,750 feet—not altogether mud bottom, but sometimes very hard sand bottom.

Q. Please state whether or not there are any buildings on the pier head?

A. Yes, sir.

Q. Please state as near as possible the number and character of those buildings?

260 A. Well, sir, there was an old warehouse, built at the time the wharf was built, and within the last few years I have had a larger and better warehouse built; and in addition to that there are several persons who have built houses on piles, along the bridgeway, by my permission, given to them, as to the use of the wharf. They are engaged in the oyster business. There are some four of those, I think.

Q. Do or not the parties who have houses along your wharf bridge buy oysters at the pier head and pack and ship them from their respective places at the wharf?

A. Yes, sir, that was the purpose for which I allowed them to have the use of my wharf, in order that I might receive compensation in the way of commissions on their freight.

By Mr. FITZHUGH:

Q. From whom did you receive the commissions?
A. From Mr. Williams, always.

By Mr. CARTER:

Q. Please state whether or not any oysters have been shipped by the parties having their houses along that wharf, by the People's Steamboat Line, or any other line but Mr. Williams'?

A. I could not answer that question, because you know I live about six or seven miles from the wharf and I very rarely look after matters of that kind. I rely upon Mr. Williams to render his quarterly statements to me. I do not expect compensation from any other source than Mr. Williams.

Q. Please state whether or not a part of the money which you have admitted receiving by way of checks from the People's Steamboat Company, was to pay the wharfage on oysters carried by the Tourist over your wharf?

A. I can not possibly give you any information as to the character of the freight for which I received this compensation.

Q. Please state whether or not you have a man in charge of the wharf as agent and wharfinger?

A. I have, sir, for the purposes of receiving freight and having freight shipped over the Weems Line, and for no other purpose.

Q. Please state the duties required of the wharfinger or agent?

A. Well, they meet the boats and give information to the officers of the boats, as to the freight on the wharf to be shipped and to receive the freight that is to be deposited on the wharf by these boats. That is the extent of their duties, as far as I know.

Q. You have stated that you own two warehouses on your pier head. Please state the uses to which you put these warehouses?

261 A. Well, I have never given any specific directions, sir, and the matter is left altogether with my agent, who is my nephew, Thomas B. Evans. I understand that the old warehouse is kept open—not locked. The new warehouse is kept locked all the while. I don't know who takes the liberty of using the open warehouse. You know my profession and occupation as a farmer fully engages my time away from that wharf, and I am not called upon to take much interest in it, unless it is to spend some money in repairs—which are very frequent and right heavy.

Q. Please state approximately what section of the country has Waterview as its regular shipping point for receiving and sending off freight?

A. Well, sir, the topography of the country bordering on that portion of the Rappahannock river is bounded by Parrott's creek, that I have referred to, on which there is a public landing on the upper side of the wharf; and then the riparian owners of lands from that point down to Lagrange creek, the mouth of which is a short distance west of Urban's wharf. There are several right large farms near—Corbin Hall, of 1,900 acres; there is one farm known as Wick's, of some five or six hundred; Inglewood farm belonging to Judge Montague, of 600, think; the farm I bought of 500 acres. They border right on

the river, and then there are some, I suppose—about as much land as these farms—containing in the aggregate—that are between these farms and the public road on which I live—the back country. In addition to that, sometimes there is a good deal of freight brought across from King and Queen county, and when the wagons and vehicles reach Churchview they are about an equal distance from Waterview and Urbanna, and they generally adopt the Waterview route, for the reason that it is more easily traveled to and from the wharf.

Q. How far is it from Waterview wharf to Lagrange creek?

A. Well, around the river shore, I suppose it is four or five miles.

Q. How far is it back from Waterview into the back country, to King & Queen, whence wagons come periodically to Waterview wharf?

A. I suppose ten or twelve miles, but there is a very limited portion of the freight received from King & Queen county.

Q. Is there or not a store kept in the storehouse in the immediate proximity to the shore end of Waterview wharf?

A. I don't understand your question. Oh, yes, there has been a mercantile business conducted there ever since I had the store built in 1880. It is my property, and I rent it out from year to year.

262 Redirect examination.

By Mr. FITZHUGH:

Q. You stated that you built first one, and then a second warehouse, on the pier head. Please state what you built them for?

A. I built them to carry out the purposes of the contract between Mr. Williams and myself.

Q. To receive freight both from the boats and from the surrounding country?

A. Yes, sir.

Q. To be shipped by the Weems Line?

A. Yes, sir.

By the SPECIAL MASTER:

Q. Did you apply for or obtain at the time you built your wharf, or since that time, authority to build it—other than that accorded to all riparian owners?

A. No, sir; I did not; I did not conceive it to be necessary. I built it under authority of Section 998 of the Code.

Q. Does the Weems Line Steamers stop at your wharf regularly?

A. It does, sir. It is a part of the contract, that as long as I keep up the wharf in proper condition, Mr. Williams will send his steamers to the wharf, and he has observed that faithfully.

Q. And they stop with or without signal?

A. Yes, sir, without signal; there is no signal ever necessary.

Q. Do you remember the cost of the wharf originally built by you—approximately?

A. Well, no, sir, I do not, for the reason that I engaged a man to build the wharf and he built the boats upon which the pile driver was fixed. I furnished him with some four or five colored men to

help, and during the stormy weather they would go into the woods and cut the piles and cap-sills and the stringers and the material was all furnished, you know, from my own land, for the most part. I suppose if it was reasonably estimated it was in the neighborhood of $2,000.

Q. Do you recall the average revenue per annum you receive, by virtue of this contract, or from all sources?

A. Well, sir, I never have received twenty-five dollars from any other source than through Mr. Williams. At first the income was very small, and even now in comparison with other wharves it is small. I think it averages between four and five hundred dollars a year.

263 By Mr. CARTER:

Q. Do you state as a fact within your knowledge that the Weems boats always stop at Waterview wharf, in passing up and down the river?

A. Well, Mr. Carter, I observe very closely with reference to that, and if you will observe the schedule of the trips of the boats in the papers you will find that other wharves are frequently left out, but Waterview wharf is never left out; if through an emergency, a boat does pass at any time, it is a very rare exception. I always feel safe that I can take the boats at Waterview, as they pass up and down the river, by virtue of the contract between Mr. Williams and myself.

And further this deponent saith not.

A. B. EVANS.

NOTE.—By agreement between parties, by counsel, the signature of the witness is waived.

JOHN S. BAXTER, another witness introduced on behalf of the plaintiff, being first duly sworn, deposed as follows:

By Mr. FITZHUGH:

Q. Are you the agent of the Weems Steamboat Company at Leedstown wharf?

A. Yes, sir.

Q. How long have you been the agent there?

A. My father was agent before me, but I mostly attended to the wharf, I suppose twenty or twenty-five years. I have had the agency since his death—two years.

Q. Do you collect any wharfage at that wharf, from any source?

A. No, sir.

Q. Have you ever collected any since you have been the agent there?

A. No, sir.

Q. Have you had any instructions from the Weems Steamboat Company, or the owners of the steamers, that own the wharf, as to who should be allowed to use it?

A. Yes, sir.

Q. What were your instructions?

A. That it was their private property, and not to allow any sail vessel or other boats to use the wharf.

Q. Does the line of steamers of this company stop regularly at that wharf?

A. Yes, sir.

Q. I hand you Exhibit #23 filed with these depositions, which purports to be a diagram of the Leedstown wharf property. Please examine it and state whether or not it is correct.

A. Yes, sir, I think I understand that.

Q. State whether or not it is correct?

A. I think so, sir.

264 Cross-examination.

By Mr. CARTER:

Q. Upon the plat marked Exhibit #23, which you have just examined, I see the words R. B. Spillman's. Will you please state who owns the land adjoining the land of the Weems Steamboat Company at Leedstown, on the lower side?

A. Spillman has a small piece in there; then below him is Mr. Henry Taylor's land.

Q. Will you please state whether or not there are some houses upon Mr. Spillman's land, the up-river edge of which houses are on the line between Mr. Spillman and the Weems Steamboat Company?

A. I think, sir, Mr. Spillman's warehouse is on the line.

Q. Will you please state whether or not the diagram of the wharf as shown is accurate in making the wharf square; and state whether or not the outer down river corner of the wharf is in front of Mr. Spillman's land?

A. No, sir, I think it is square.

Q. Have you ever looked at the line which you say passes immediately back of Mr. Spillman's warehouse, to see where the line cuts the wharf?

A. No, sir, I don't think I have taken particular notice, but that warehouse I have been told by Mr. Spillman was on the line—the warehouse building.

Q. Will you please state whether or not there is a store at Leedstown?

A. Yes, sir, two there.

Q. Have you or not a store there?

A. I have, sir.

Q. Is the location of your store marked on this plat?

A. No, sir—it is on this road leading to Oak Grove.

Q. I see upon the plat a space with "store" written on it?

A. That is Mr. Smoot's, just in front of the wharf.

Q. Will you please state whether or not there is a post office at Leedstown?

A. Yes, sir, Mr. C. W. Smoot keeps it.

Q. Will you please state how the post office is served?

A. They have a land route, sir, and steamboat; and they have two mails a day overland.

Q. Will you please state whether or not the outside of the wharf or pier at Leedstown is in the navigable waters of the Rappahannock river?

A. I have never measured the water, but I suppose it is eight or nine feet.

Q. Do boats drawing eight or nine feet of water readily land there?

A. Yes, sir.

Q. Will you please state how the United States mail is carried from the post office to the boats, and from the boats to the post office?

265 A. Why, I think the Weems Line have a man to take the mail sack up to Smoot's store, and the land mail is brought there by vehicles.

Q. By what way, or route, does the mail messenger pass from the store to the pier?

A. Across this wharf, sir.

Q. By the shortest line?

A. Yes, sir.

Q. Will you please state the nature of the traffic carried on by boats over the wharf at Leedstown?

A. Well, it is general merchandise bringing goods for the merchants there, and taking away produce such as chickens, wheat, corn, and all that sort of stuff.

Q. Will you please state who are the shippers and consignees of freight received over that wharf?

A. A good many of the merchants there, and farmers of the surrounding country.

Q. You state that you have never critically examined the situation of the wharf at Leedstown? Do I understand you to say that you can not state positively whether this plat is accurate or not?

A. It looks to me as if it was accurate. The wharf runs square down from the road, and Mr. Spillman tells me this house of his is on the line, and it is at the lower corner of the wharf.

Q. I notice on this plat a yellow line in front of the store, which you say is the location of the post office, and between the store and the wharf. Please state whether or not there is any fence or obstruction of any kind between the said store and the said wharf?

A. No, sir, none that I know of.

Q. Is, or not, the ground between the wharf and the public road absolutely open?

A. Yes, sir.

Q. Are or not the patrons of the wharf who go there to ship and receive their goods, accustomed to drive upon and over the portion of ground shown by the plat here between the wharf and the public road?

A. Yes, sir.

Q. Please state when Leedstown wharf was built, if you know?

A. I don't know, sir; before I moved there, sir.

Q. Have the same conditions as to the road and the ground

around the wharf, and the use thereof by the public, prevailed ever since you knew the wharf?

A. Yes, sir.

Q. Is the post office at Leedstown served by horse mails also?

A. Yes, sir, there is a cart pulled by a horse.

Q. That is what I mean—Star Routes?

A. Yes, sir, Star Routes; we have two land mails a day.

Q. From which direction do these land mails come?

A. From Oak Grove, sir, to Warsaw and back in the evening.

And further this deponent saith not.

JOHN S. BAXTER.

266 NOTE.—By agreement between the parties, by counsel, the signature of the witness is waived.

The plaintiff's counsel thereupon offered the following papers in evidence as exhibits (some of said papers having been referred to in the evidence before), to-wit:

Bayport Wharf:

Deed from Richardson to Farinholt, dated May 22, 1885;
Deed from Farinholt to Farinholt, dated June 29, 1882;
Deed from Montague to Farinholt, dated July 14, 1870.
Marked Plaintiff's Exhibit No. 1.

Deed from Annette L. Fauntleroy to Robert K. Nevitt, dated December 11, 1865—Exhibit No. 26.

Deed from Robert K. Nevitt to H. H. Fauntleroy, dated December 11, 1865—Exhibit No. 27.

Deed from H. H. Fauntleroy to Annette L. Fauntleroy, dated April 4, 1870—Exhibit No. 28.

Deed from Annette L. Fauntleroy to John R. Peed, dated August 1, 1884—Exhibit No. 29.

Decree of Court in Peed *vs.* Carter, in the Circuit Court of Richmond County, dated October 18, 1888—Exhibit No. 30.

Deed from Lettie A. Carter to Jeanette J. Marks, dated December 13, 1888, and marked—Exhibit No. 31.

Deed from Jeanette J. Marks to W. A. Jones, dated December 13, 1888—Exhibit No. 32.

Abstract of — Naylor's Wharf property—Exhibit No. 33.

Wellford's Wharf:

Deed from Crump, trustee to Wellford, dated March 5, 1873—Exhibit No. 34.

Deed from Crabb to Wellford, dated September 7, 1878—Exhibit No. 35.

Deed from R. L. Bellfield to A. N. Wellford, dated May 24, 1879—Exhibit No. 36.

267 Deed from Milton H. Yeatman to A. N. Wellford, dated December 1, 1879—Exhibit No. 37.

Deed from W. A. Jones to A. N. Wellford, dated November 18, 1882—Exhibit No. 38.

Deed from A. N. Wellford to B. Randolph Wellford, dated January 26, 1884—Exhibit No. 39.

Deed from B. R. Wellford to H. T. Douglas, dated December 10, 1896—Exhibit No. 40.

Deed from Douglas to the Weems Steamboat Co., dated November 2, 1901—Exhibit No. 41.

Abstract of title of Wellford's Wharf—Exhibit No. 42.

Bowler's Wharf:

Copy of order of Court of the Circuit Court of Essex County, dated December 2, 1893—Exhibit No. 43.

Deed from B. L. Farinholt to Henry Williams, dated February 26, 1887—Exhibit No. 44.

Order of Essex County Court, dated February 16, 1874—Exhibit No. 45.

Agreement between W. T. Neal and Weems Steamboat Company—Exhibit No. 46.

Whealton's Wharf:

Agreement between John S. H. Whealton and John Whealton, dated December 19, 1889—Exhibit No. 47.

Deed from John H. Whealton to Whealton Packing Co., dated July 28, 1900—Exhibit No. 48.

Deed from J. H. S. Whealton to J. H. Whealton, dated August 16, 1891—Exhibit No. 49.

Deed from Saunders to Whealton & Whealton, dated December 16, 1889—Exhibit No. 50.

Abstract of Title of Whealton's Wharf—Exhibit No. 51.

268 *Port Royal Wharf:*

Deed from Grammer *et al.* to Tome *et al.*, dated April 25, 1866—Exhibit No. 52.

Deed from Tome *et al.* to Williams *et als.*, dated February 10, 1875—Exhibit No. 53.

Deed from Williams *et als.* to Weems Steamboat Company, dated January 4, 1892—Exhibit No. 54.

Abstract of Title—Exhibit No. 55.

Monaskon Wharf:

Deed from A. L. Carter to Mary D. Carter, dated June 30, 1869—Exhibit No. 56.

Deed from Mary D. Carter to A. L. Carter, dated July 14, 1871—Exhibit No. 57.

Deed from Carter to Landreth, dated July 17, 1871—Exhibit No. 58.

Deed from Mary D. Carter to B. H. Morgan, dated June 21, 1888—Exhibit No. 59.

Deed from B. H. Morgan to B. L. Farinholt, dated April 18, 1889—Exhibit No. 60.

Deed from B. L. Farinholt to Minnie Farinholt, dated June 30, 1892—Exhibit No. 61.

Abstract of Title of Monaskon Wharf—Exhibit No. 62.

Sharp's Wharf:

Deed from L. D. Roane to C. L. Clauson, dated December 26, 1872—Exhibit No. 63.

Deed from C. L. Clauson to Georgianna Williams *et als.*, dated April 28, 1876—Exhibit No. 64.

Georgianna Williams to Weems Steamboat Co., dated January 5, 1892—Exhibit No. 65.

Abstract of Title—Exhibit No. 66.

269 *Ware's Wharf:*

Will of Edward M. Ware—Exhibit No. 67.

Carter's Wharf:

Deed from Beal & Walker to Braxton, dated June 1, 1875—Exhibit No. 68.

Deed Braxton to Croxton, dated January 24, 1876—Exhibit No. 69.

Deed from Croxton to M. A. Carter, dated March 6, 1876—Exhibit No. 70.

Deed from J. W. Carter to M. A. Carter, dated January 1, 1880—Exhibit No. 71.

Deed from Matthews to Braxton, dated January 21, 1876—Exhibit No. 72.

Abstract of Title—Exhibit No. 73.

Leedstown Wharf:

Deed from John R. Marchant to Thomas H. Massey, dated October 29, 1863—Exhibit No. 74.

Deed from T. H. Massey to Tome & others, dated December 20, 1869—Exhibit No. 75.

Deed from Tome to Williams, dated February 10, 1875—Exhibit No. 76.

Deed from Neiheiser to Williams, dated August 14, 18-3—Exhibit No. 77.

Deed from Williams to Weems Steamboat Company, dated January 4, 1892—Exhibit No. 78.

Abstract of Title to Leedstown—Exhibit No. 79.

Tappahannock Wharf:

Deed from Jones to Daingerfield, dated May 29, 1858—Exhibit No. 80.

270 Deed from Daingerfield to Matthews, trustee, dated May 29, 1858—Exhibit No. 81.

Deed from H. W. Daingerfield to Farland, dated June 22, 1866—Exhibit No. 82.

Deed from Farland to Weems, dated May 28, 1867—Exhibit No. 83.

Deed from Matthews to Weems *et al.*, dated July 24, 1869—Exhibit No. 84.

Deed from Tome to Williams, dated February 15, 1875—Exhibit No. 85.

Deed from Williams *et als.* to Weems Steamboat Company, dated January 4, 1892—Exhibit No. 86.

Deed from Wynn to the Weems Steamboat Co., dated October 10, 1895—Exhibit No. 87.

Deed from Wynn to Wynn, dated April 13, 1889—Exhibit No. 88.

Deed from Wynn to Pollard, dated August 15, 1881—Exhibit No. 89.

Deed from Wynn to Pollard, dated January 1, 1872—Exhibit No. 90.

Deed from Parker to Wynn, dated March 16, 1867—Exhibit No. 91.

Abstract of Title of Tappahannock property; Bowler's Wharf and Ware's Wharf—Exhibit No. 92.

Waterview Property:

Deed from Opie Norris to Fisher, dated May 1, 1857—
Deed from Cohen to Evans, dated November 20 1874— } Exhibit No. 93.

Abstract of Bayport Wharf and Waterview Wharf—Exhibit No. 94.

E. M. LONG,
Special Master.

271 PLAINTIFF'S EXHIBIT No. 1. Filed with Depositions and Returned with Special Master's Report.

VIRGINIA:

Clerk's Office, Middlesex County Court, May 26, 1903.

I, F. M. Eastman, Clerk of the County Court of Middlesex, in the State of Virginia, certify that among other records in my office the following appears:

Farinholt to Farinholt. Original sent to B. L. Farinholt by Mail.

This deed, made this the 29th day of June, 1892, between B. L. Farinholt on the one part and Lelia M. Farinholt, his wife, on the other part; Witnesseth, that said B. L. Farinholt for and in consideration of five dollars ($5.00) paid him and the natural love and affection and unsweaving devotion shown to him and his children by said Lelia M. Farinholt does hereby grant, release and convey, and by these presents invest said Lelia M. Farinholt absolutely with full right, title and interest and complete possession of all the realty now owned by him at Bayport, in Middlesex County, Va., including three acres of land bought *by* (of) one T. C. Montague and others situated fronting on the north on Rappahannock River, and the store and wharf property thereon; also the sixty-five (65) acres more or less

adjoining the aforementioned Bayport property and separated from it only by the Main road and West and Southwest of said three acres bought of Mrs. Sarah *Richeson* and others, and the one-third's interest in the Grist mill adjacent thereto, and all attachments income therefrom and land bought therewith and owned jointly one-third (⅓) each by John Seger, John A. Carlton's estate and said B. L. Farinholt. The absolute title and undisputed possession of the aforesaid property is hereby guaranteed to said Lelia M. Farinholt forever. Given under my hand and seal this the 29th day of June, 1892.

B. L. FARINHOLT. [SEAL.]

272 STATE OF MARYLAND,
City of Baltimore, To-wit:

I, G. Evett Reardon, a Commissioner appointed by the Governor of the State of Virginia for the said State of Maryland, certify that B. L. Farinholt, whose name is signed to the writing hereto annexed, bearing date on the 27th day of July, 1892, has acknowledged the same before me in my State aforesaid. Given under my hand this 27th day of July Anno Domini 1892.

G. EVETT REARDON,
A Commissioner for Virginia, in the State of Maryland, Residing at Baltimore City, 100 *E. Lexington St.*

[Commiss. Seal.]

VIRGINIA:

In the Clerk's Office of Middlesex County Court, August 2, 1892.

This deed was received for record and, together with the certificate of acknowledgment, is duly recorded.

Teste: B. B. CHOWNING, *Clerk.*

Richardson to Farinholt.

This deed, made this 22nd day of May, in the year of our Lord, 1885, by Sarah C. *Richeson,* widow; Rosa E. Baltzley and Antemius W. Baltzley, Ada E. Weaver and Joseph A. Weaver, her husband; Lillie A. McGraw and Edwin McGraw, her husband, and Addie M. Gardner and Chas. W. Gardner, her husband, all of Baltimore City, in the State of Maryland, parties of the first part and; Benjamin L. Farinholt, of Essex County, in the State of Virginia, party of the second part. Witnesseth, that the said parties of the first part for and in consideration of the sum of two hundred and forty dollars to them in hand paid, the receipt whereof they do hereby acknowledge, do grant, bargain and sell and convey unto the said party of the second part, his heirs and assigns, in fee simple all that tract of land *stitute,* lying and being in Middlesex County, in the State of Virginia, on the right of the Main road leading from Bayport to Farinholt, Segar and Carlton's Mill, the same being sixty-five acres

more or less, and being part of the tract formerly owned by John I. Richardson, dec'd, together with the buildings and improvements thereupon erected, made or being, and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages
273 to the same belonging or in any wise appertaining. To have and to hold the said tract of ground and premises above described or mentioned and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto the proper use and benefit of the said Benjamin L. Farinholt in fee simple. And the said parties of the first part covenant that they will warrant generally the property hereby granted, and that they will execute such other and further assurances of said land as may be requisite.

Witness our hands and seals.

SARAH C. RICHARDSON.	[SEAL.]
ROSA E. BALTZLEY.	[SEAL.]
ANTEMIUS W. BALTZLEY.	[SEAL.]
ADA E. WEAVER.	[SEAL.]
JOSEPH A. WEAVER.	[SEAL.]
LILLIE A. McGRAW.	[SEAL.]
JOHN E. McGRAW.	[SEAL.]
MRS. ADDIE GARDNER.	[SEAL.]
CHARLES W. GARDNER.	[SEAL.]

STATE OF MARYLAND, *City of Baltimore, ss:*

I, G. Evett Reardon, a Commissioner appointed by the Governor of the State of Virginia for the State of Maryland, do hereby certify that Sarah C. Richardson, widow; Rosa E. Baltzley and Autemius W. Baltzley, her husband; Ada E. Weaver and Joseph A. Weaver, her husband, Lillie A. McGraw and Edward McGraw, her husband; and Addie M. Gardner and Charles W. Gardner, her husband; whose names are signed to the writing above, bearing date on the 22nd day of May, 1885, have acknowledged the same before me in my State aforesaid. Given under my hand and official seal this 22nd day of May A. D., 1885.

[SEAL.] G. EVETT REARDON,
A Commissioner for the State of Virginia, in Maryland, Residing at Baltimore City.

274 STATE OF MARYLAND, *City of Baltimore, ss:*

I, G. Evett Reardon, a Commissioner appointed by the Governor of the State of Virginia for the State of Maryland, do hereby certify that Rosa E. Baltzley, the wife of Autemius W. Baltzley; Ida E. Weaver, the wife of Joseph A. Weaver; Lillie A. McGraw, the wife of Edward M. McGraw, and Addie M. Gardner, the wife of Chas. W. Gardner, whose names are signed to the writing above bearing date on the 22nd day of May A. D., 1885, personally appeared before me in my State aforesaid, and being examined by me privily and apart from their respective husbands, and having the writing aforesaid fully explained to them, they the said Rosa E. Baltzley, Ada E.

Weaver, Lillie A. McGraw and Ada M. Gardner respectively acknowledged the said writing to be their act, and declared that they had willingly executed the same, and do not wish to retract it. Given under my hand and official seal this 22nd day of May A. D., 1885.

[SEAL.] G. EVETT REARDON,
A Commissioner for the State of Virginia, in Maryland, Residing at Baltimore City.

VIRGINIA:

In the Clerk's Office of Middlesex County Court, May 30th, 1885

This deed was received for record and is with the certificates of acknowledgement truly recorded.
Teste: P. T. WOODWARD, *Clerk.*

Montague to Farinholt. Deed.

This deed, made this 14th day of July, in the year 1870, between T. C. Montague, Celestine L. Montague, his wife, and C. D. Montague of the one part and B. L. Farinholt of the other part. Witnesseth, that in consideration of the sum of one hundred and fifty dollars to them paid the said T. C., Celestine L. and C. D. Montague do grant unto the said B. L. Farinholt with general warranty of title all that tract of land containing three (3) acres more or less lying in Middlesex County, Virginia, and bounded as follows: On the North by the Rappahannock River, on the East and South by the lands of John Richardson, dec'd., and on the West by the public road leading from Mason's Mill to the Rappahannock River.

Witness the following signatures and seals.

C. D. MONTAGUE. [SEAL.]
T. C. MONTAGUE. [SEAL.]
C. L. MONTAGUE. [SEAL.]

275 COUNTY OF STAFFORD, *To-wit:*

I, J. B. T. Suttle, a Notary Public for the county aforesaid, in the State of Virginia, do certify that C. D. Montague, whose name is signed to the writing above, bearing date on the 14th day of July, 1870, has acknowledged the same before me in my county aforesaid. Given under my hand this 2nd day of August, 1870.

J. BENJ. T. SUTTLE, *N. P.*

STATE OF NEW JERSEY, *To-wit:*

I, James H. Durand, a Notary Public duly commissioned and qualified for the said State of New Jersey, do certify that T. C. Montague, whose name is signed to the writing above, bearing date on the 14th of July, 1870, has acknowledged the same before me in my State aforesaid. Given under my hand this 22nd day of August, 1870.

JAMES H. DURAND,
Notary Public.

STATE OF NEW JERSEY, *County of Warren, To-wit:*

I, James H. Durand, a Notary Public duly commissioned and qualified for the State of New Jersey, do certify that Celestine L. Montague, the wife of T. C. Montague, whose names *are* signed to the above writing, bearing date on the 14th July, 1870, personally appeared before me in the State aforesaid, and being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she the said Celestine L. Montague acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 22nd day of August, 1870.

JAMES H. DURAND,
Notary Public.

The sum of one hundred and fifty dollars, the consideration expressed in this deed, has been fully paid by the grantee. A. L. Montague, agent for grantees.

276 VIRGINIA:

In the Clerk's Office of Middlesex County Court, January 10th, 1871.

This deed from T. C. Montague and C. D. Montague to B. L. Farinholt, dated 14th July, 1870, being properly certified, is, together with the certificate, admitted to record and is truly recorded.

Teste: P. T. WOODWARD, *Clerk:*

I hereby certify the foregoing are each true copies of the original records respectively of deeds remaining in my office.

Given under my hand and official seal this 26th day of May, 1903, and of the Commonwealth the 127th year.

[SEAL.] F. M. EASTMAN, *Clerk.*

PLAINTIFF'S EXHIBIT No. 2. Filed with Depositions and Returned with Special Master's Report.

This Deed, Made the first day of January, 1903, by and between B. L. Farinholt and The Weems Steamboat Company of Baltimore City.

Witnesseth, That for valuable consideration the said B. L. Farinholt doth lease for the period of one year to the said Weems Steamboat Company of Baltimore City the wharves on the Rappahannock River, in the counties of Middlesex and Lancaster, respectively, known as Bay Port and Monaskon, the said company during said lease to have the exclusive use and possession of said wharves.

Provided, That the said B. L. Farinholt reserves to himself the privilege of allowing to land at said wharves sail vessels, provided they do not interfere with the use of the said wharves by the steamers of said Weems Steamboat Company of Baltimore City.

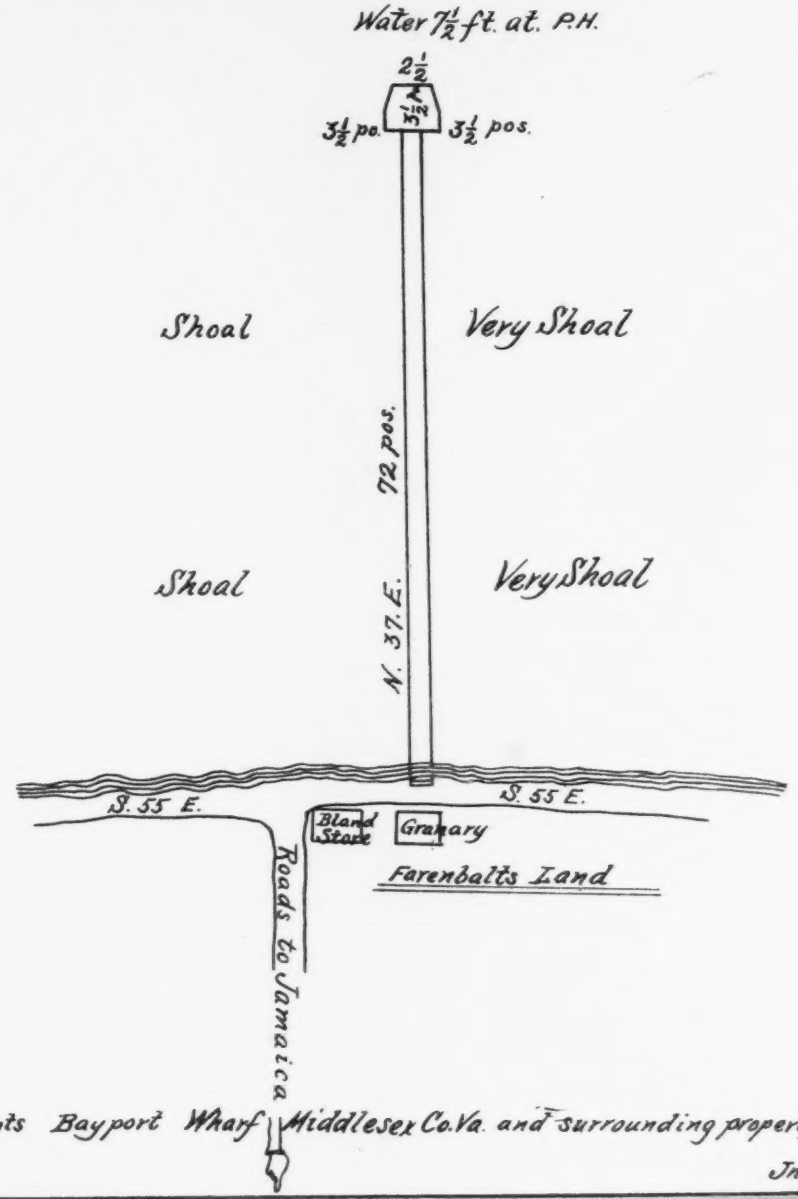
Witness *by* hand and seal this first day of January, 1903.

B. L. FARINHOLT. [SEAL.]

(Here follow diagrams marked pp. 277 and 278.)

No. 181.
Weems Co.
v.
People's Co.
p. 277

Plaintiff's Exhibit No. 3 filed with Depositions and returned with Special Master's Report.

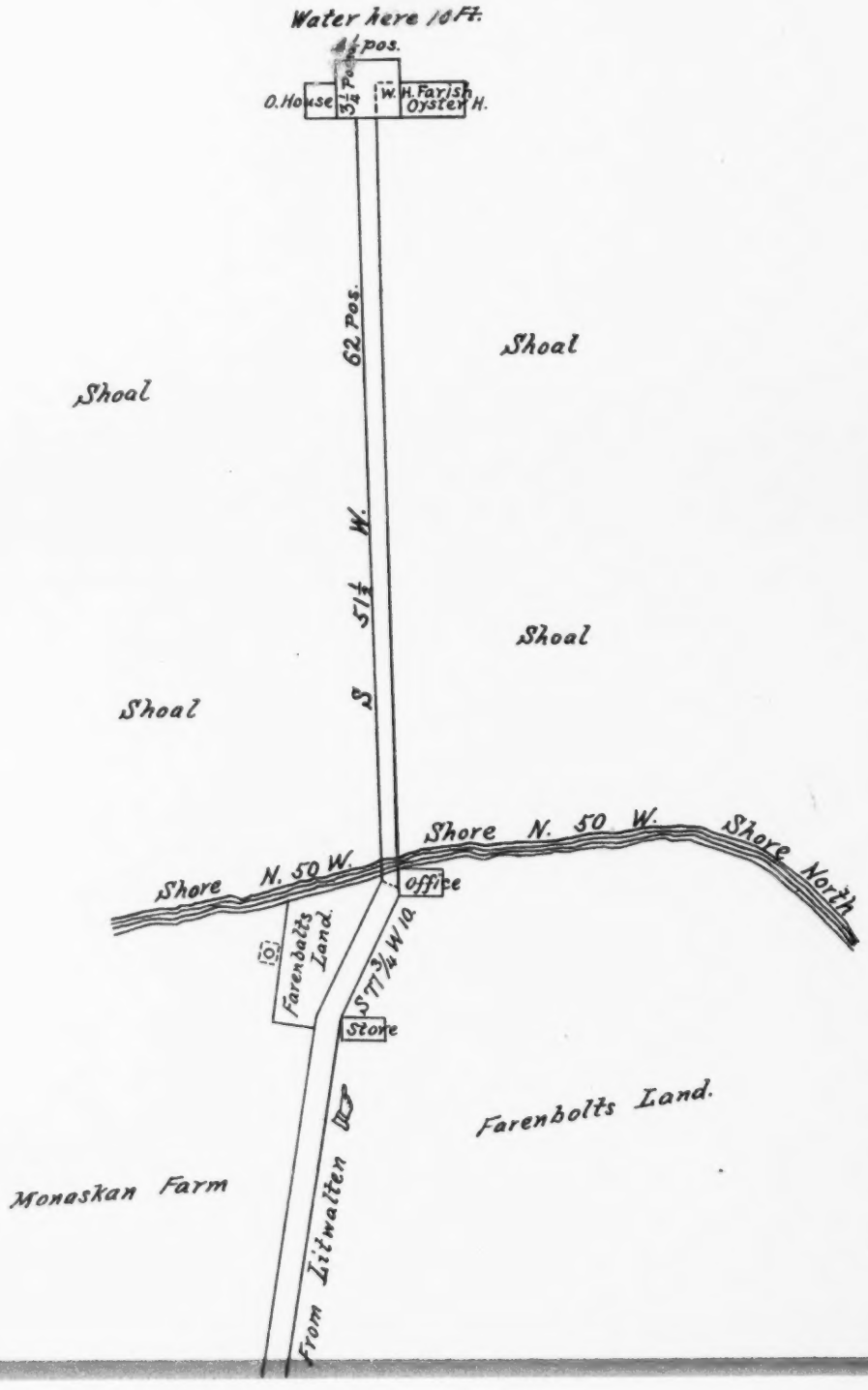


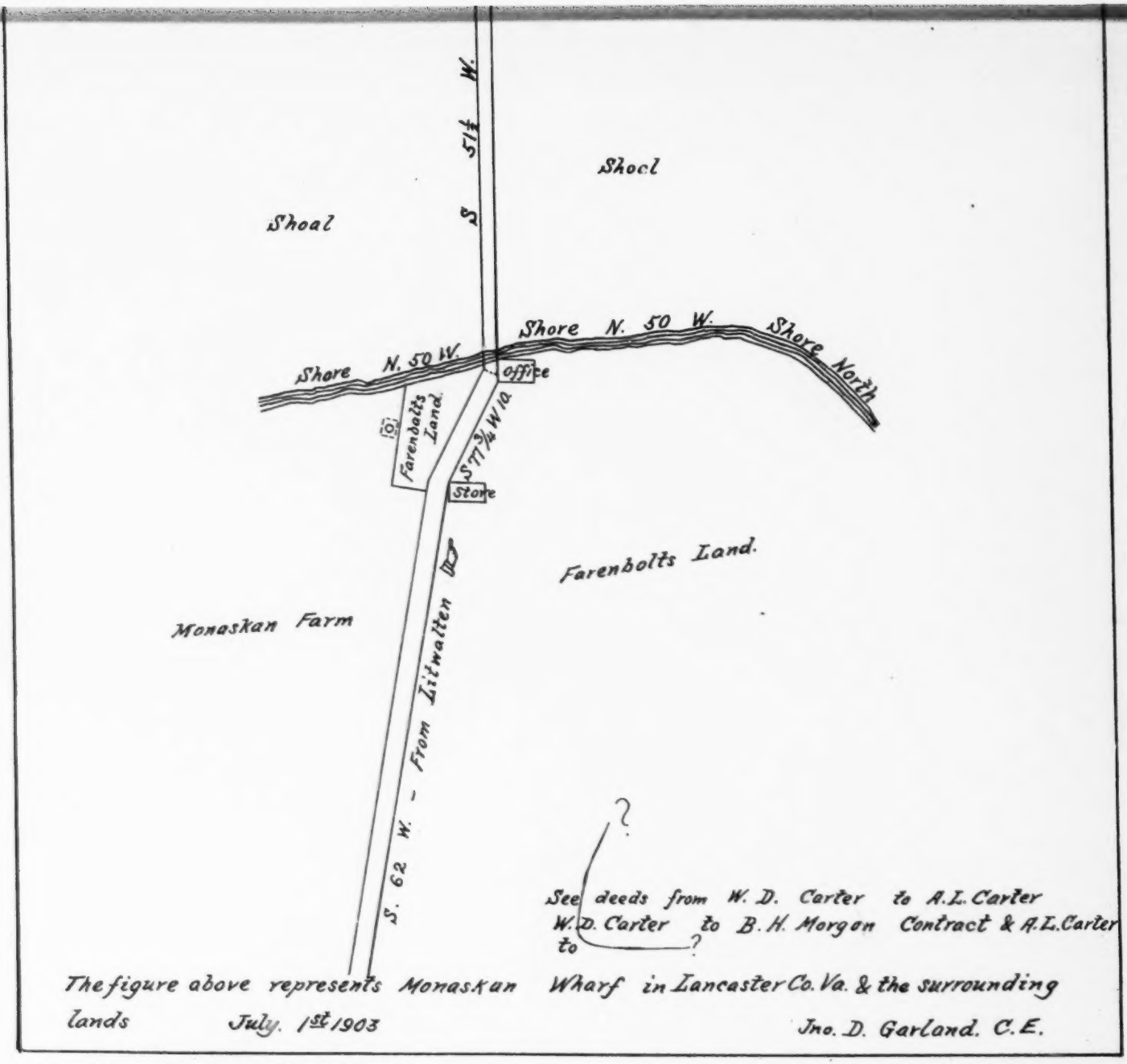
The fig. above represents Bayport Wharf Middlesex Co. Va. and surrounding property as surveyed by me July 1st 1903.

Jno. D. Garland - C.E.

No. 181 Weems Co. vs Ropes Co. } p. 278

Plaintiff's Exhibit No. 4 filed with Depositions and Returned with Special Master's Report.





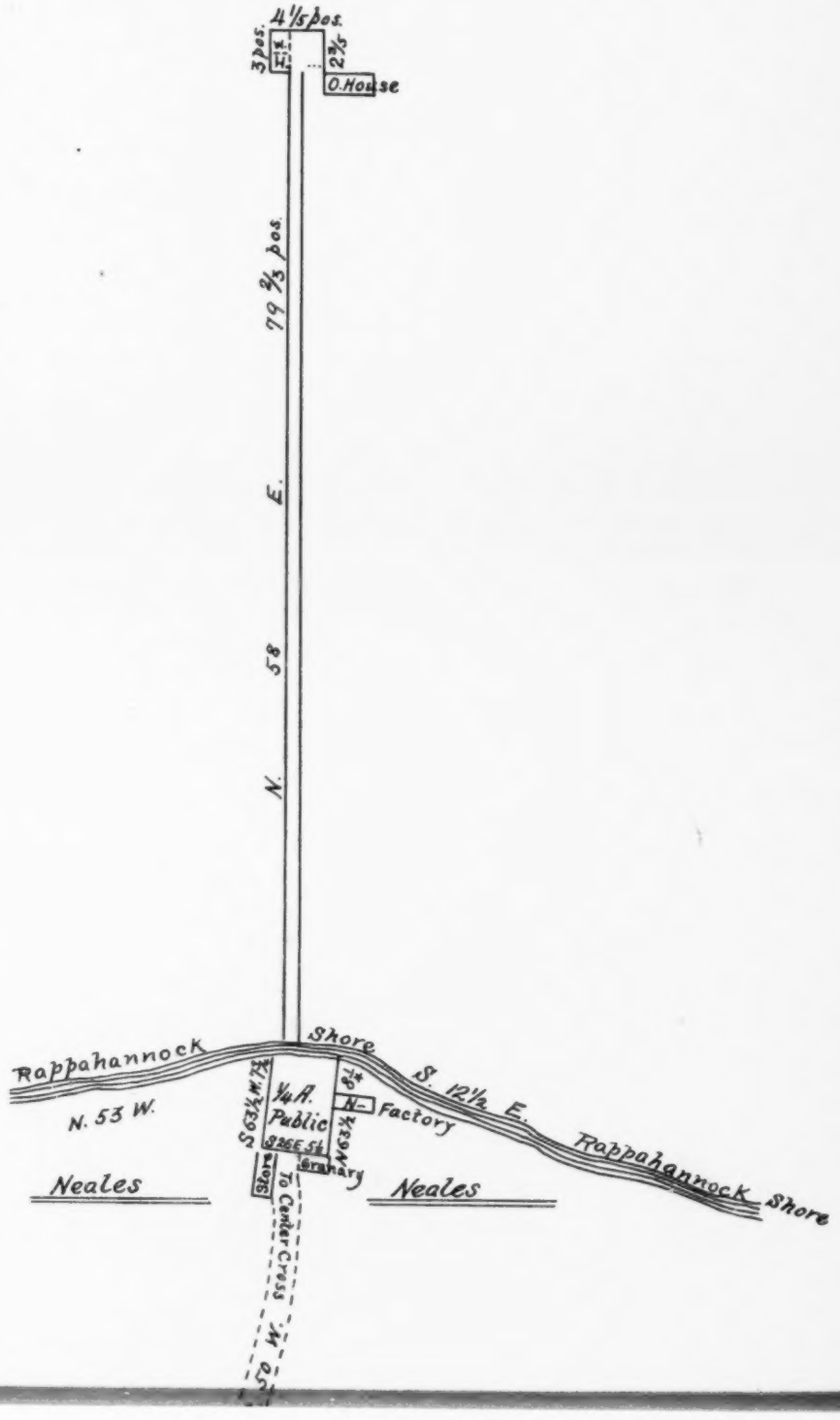
The figure above represents Monaskan Wharf in Lancaster Co. Va. & the surrounding lands July. 1st 1903

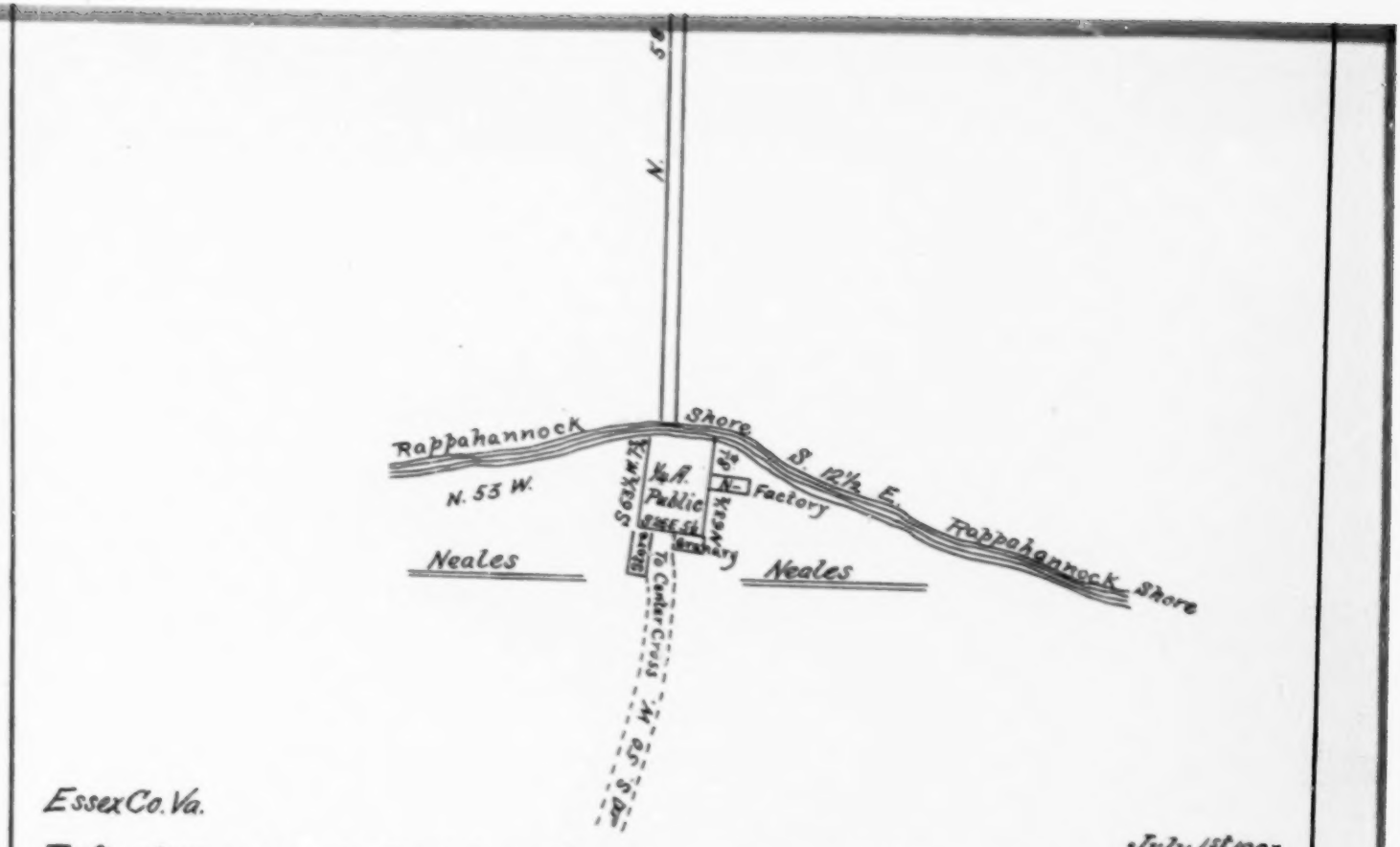
Jno. D. Garland. C.E.

Traced by C.J. Roelker. Jan. 17-'06.

No. 181.
Wilcus Co.
v.
Peoples Co.
p. 280.

Plaintiff's Exhibit No. 6 filed with Depositions and returned with Special Master's Report.





The fig. above represents Bowler's Wh'f. and land attached thereto, & surrounding ——— ? July 1st 1903 See Order of Essex Co. Ct. filed herein Jno. D. Garland, C.E.

July 1st 1903.

?

Traced by C.J. Roelker Jan. 18. 1906.

279 PLAINTIFF'S EXHIBIT No. 5. Filed with Depositions and Returned with Special Master's Report.

This Deed, Made the 21st day of January, 1903, by and between R. G. Neale and the Weems Steamboat Company of Baltimore City.

Witnesseth, That for valuable consideration the said R. G. Neale doth lease for the period of one year to the said Weems Steamboat Company of Baltimore City the wharf on the Rappahannock River, in the county of Essex, known as Bowler's Wharf, the said company during said lease to have the exclusive use and possession of said wharf.

Provided, That the said R. G. Neale reserves to himself the privilege of allowing to land at said wharf sail vessels, provided they do not interfere with the use of the said wharf by the steamers of said Weems Steamboat Company of Baltimore City.

Witness my hand and seal this 21st day of January, 1903.

R. G. NEALE. [SEAL.]

(Here follows diagram marked p. 280.)

281 PLAINTIFF'S EXHIBIT No. 7. Filed with Depositions and Returned with Special Master's Report.

This Deed, Made the twenty-third (23d) day of January, 1903, by and between John H. Whealton and The Weems Steamboat Company of Baltimore City.

Witnesseth, That for valuable consideration the said John H. Whealton doth lease for the period of one year to the said Weems Steamboat Company of Baltimore City the wharf on the Rappahannock River, in the county of Richmond, known as Whealton's Wharf, the said company during said lease to have the exclusive use and possession of said wharf.

Provided, That the said John H. Whealton reserves to himself the privilege of allowing to land at said wharf sail vessels; provided, they do not interfere with the use of the said wharf by the steamers of said Weems Steamboat Company of Baltimore City.

Witness my hand and seal this 27th day of January, 1903.

WHEALTON PACKING CO., [SEAL.]
JNO. H. WHEALTON, *President.*

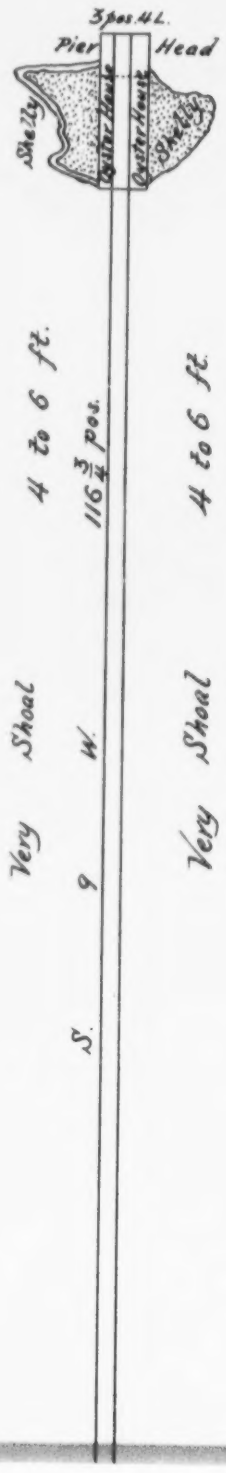
(Here follows diagram marked p. 282.)

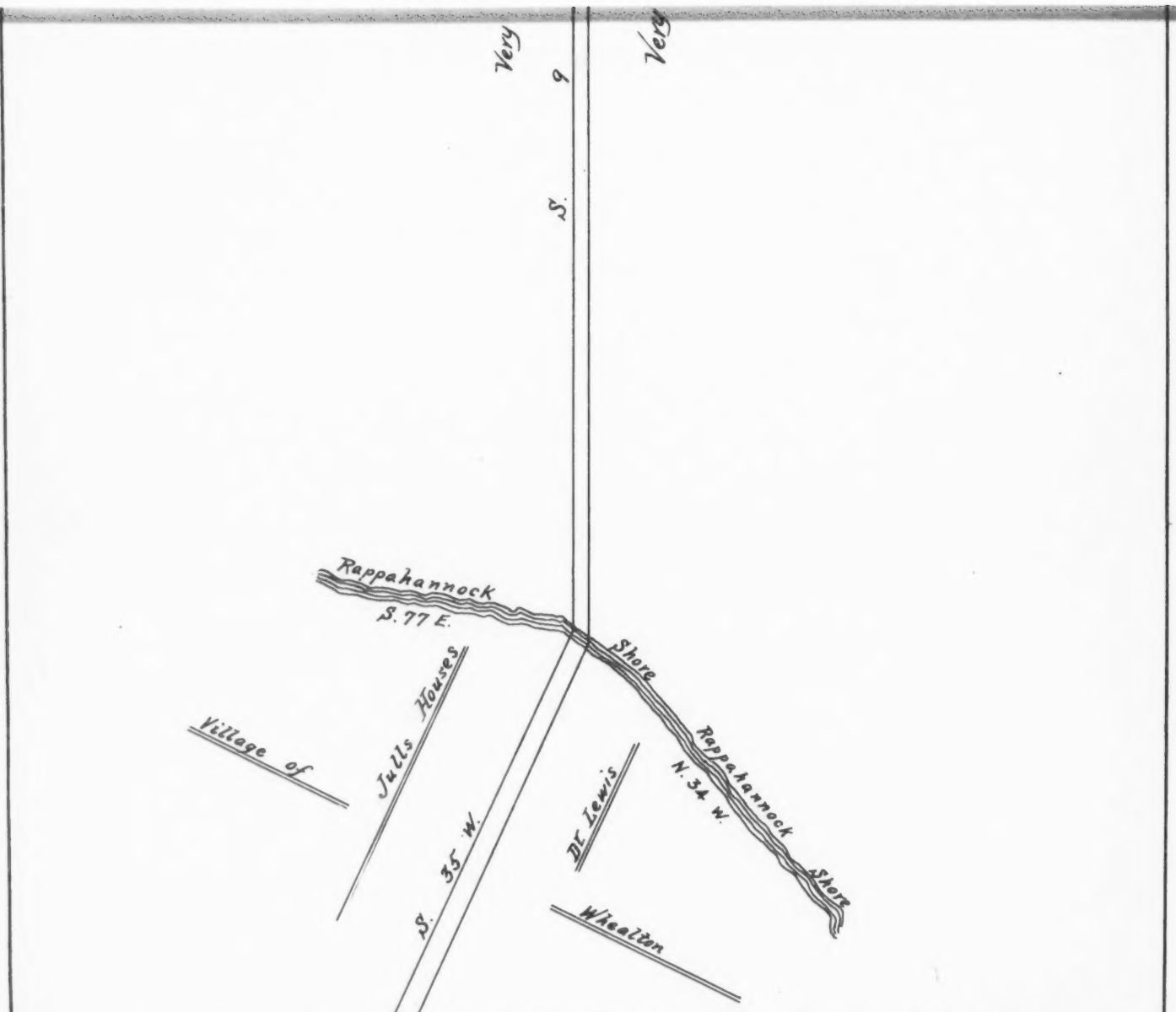
Plaintiff's Exhibit No. 8 filed with No. 1881 S

No. 181.
Wells Co
v.
Peoples Co.
p. 282

Plaintiff's Exhibit No. 8 filed with Depositions and returned with Special Master's Report.

Water 13 Feet deep at P.H.





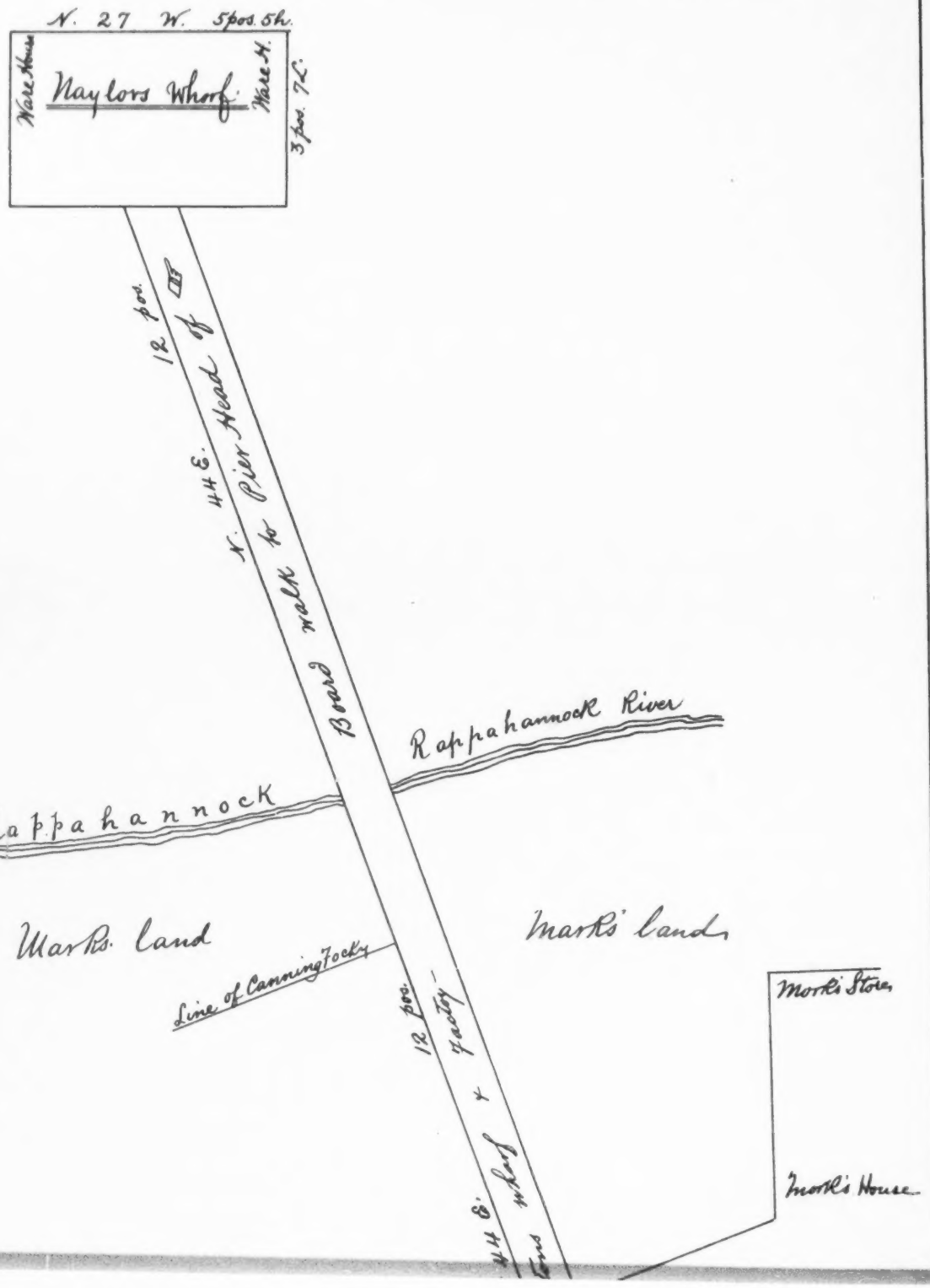
The fig above represents the "Wheatton Wharf" and property adjacent there-to in Lancaster Co. Va.
July 1st 1903. See Deed from J. H. Wheatton atty. to Wheatton Pakg. Co. Jno. D. Garland, C.E.

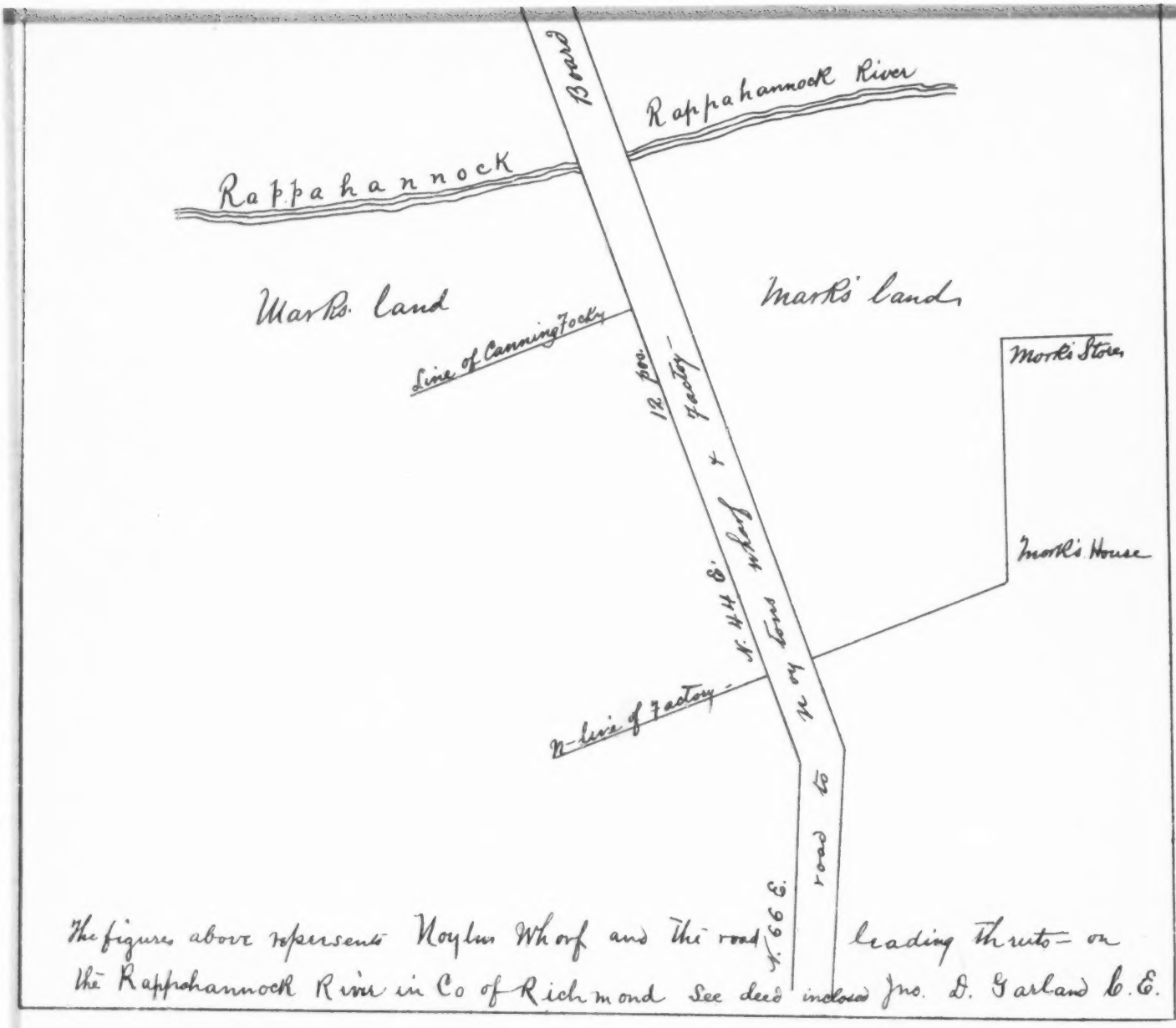
Traced by C.J. Roelker. Jan. 18-1906.

285

No 187.
Wells vs Co. } p. 285
Peoples Co.

Plaintiff's Exhibit No. 10 filed with Depositions and returned with Special Master's Report.



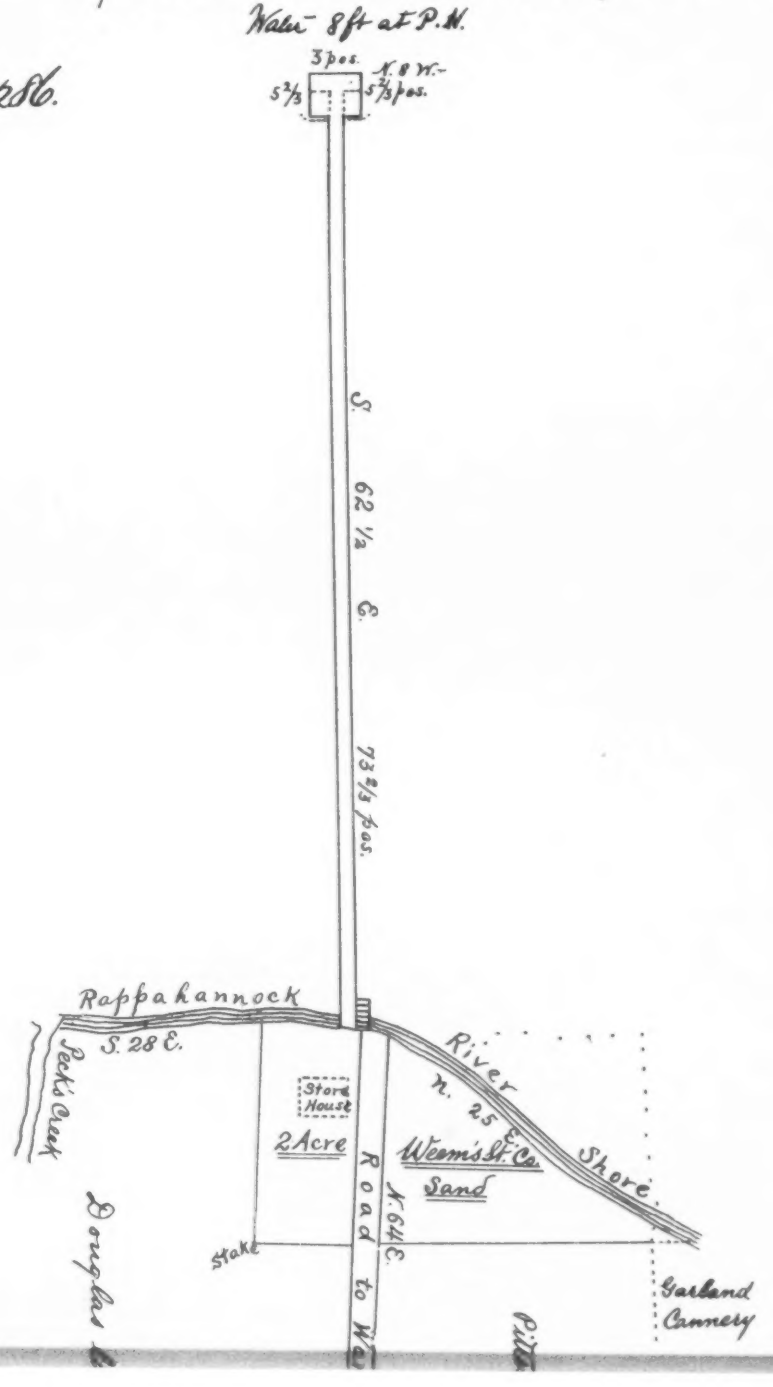


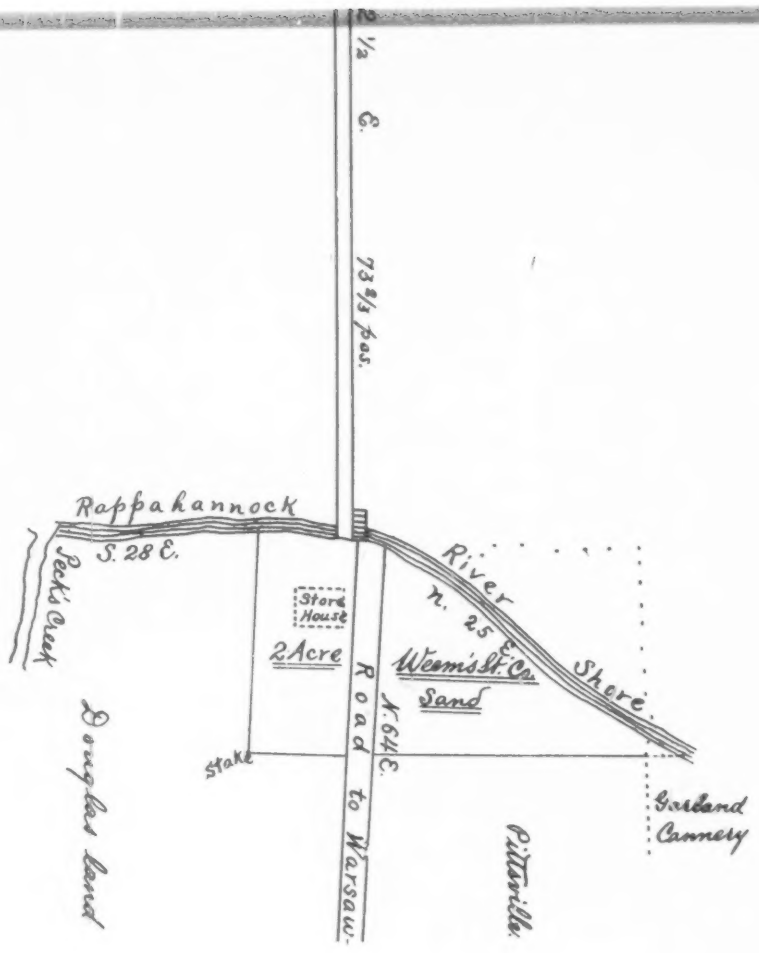
The figures above represents Moylus Wharf and the road leading thereto on the Rappahannock River in Co of Richmond See deed inclosed Jno. D. Garland C.E.

Traced by: C.J. Roelker – Jan. 20. 1906.

Plaintiff's Exhibit No. 11 filed with Depositions and Returned with Special Masters Report.

No. 181.
Weems Co.
v.
People's Co
} p. 286.





The above fig. represent Willford Whf: & land attached thereto belonging to Weems Steamboat Co. located in Richmond County Va July 1st 1903 Jno. D. Garland C.E.

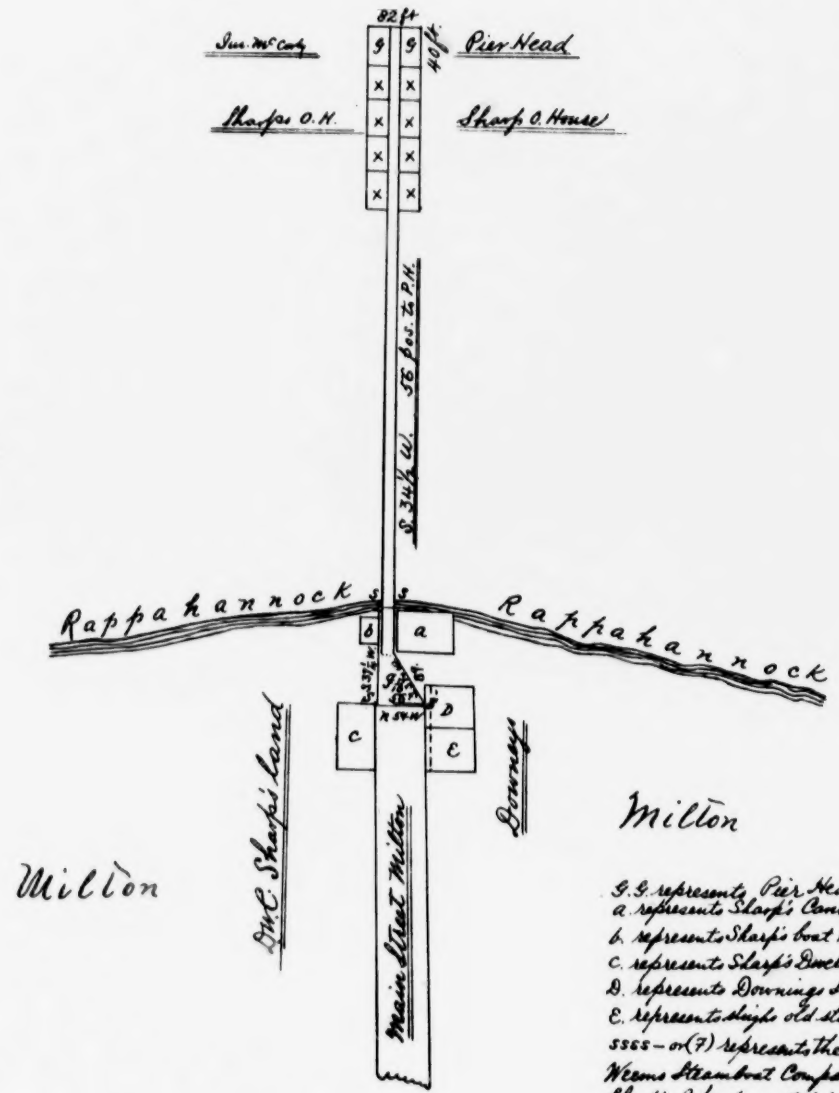
Traced by:- C.J. Roelker - Jan. 22-1906.

See Deed from Douglas to Weems St. Co.

No 181.
Weems Co. } p. 287.
v.
Peoples Co.

Plaintiff's Exhibit No. 12 filed with Depositions and Returned with Special Master's Report.

Sharp's Wharf, Richmond Co. Va



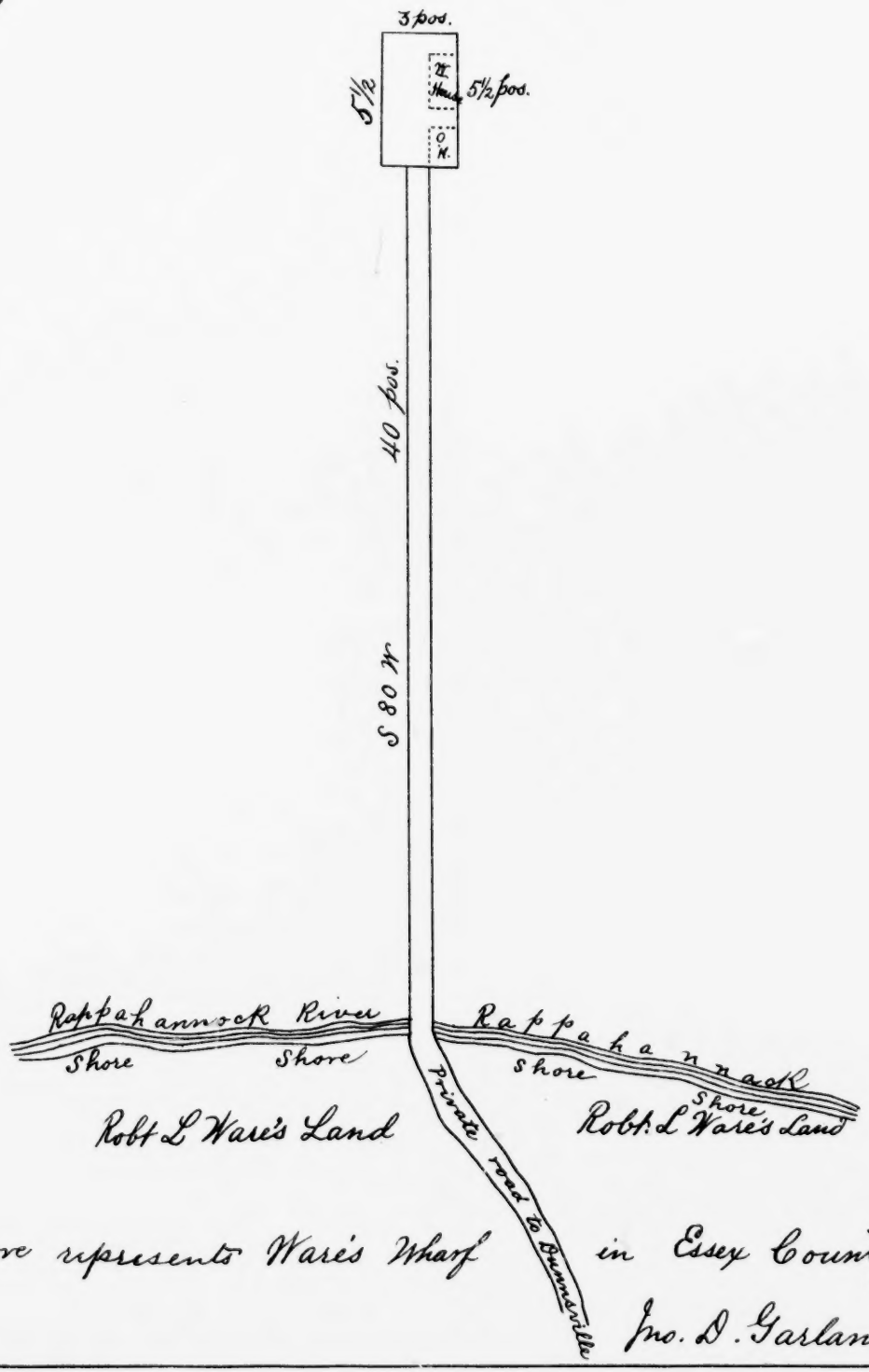
G.G. represents Pier Head of Wf - 82 x 40 ft.
a. represents Sharp's Cannery
b. represents Sharp's boat house
c. represents Sharp's Dwelling
D. represents Downings Store
E. represents single old store.
5565 - or (7) represents the land belonging to Weems Steamboat Company attached to Sharp's Wharf: containing about ½ of an acre.

The fig above represents Sharp's Wharf & land attached thereto belonging to Weems Steamboat Company - in Richmond Co. Va.
July 1st 1903. See deed - enclosed
Jno. D. Garland C. E.

Traced by - C.J. Roelker - Jan. 22-1906.

Plaintiffs Exhibit No. 13 filed with Depositions and Returned with Special Master's Report

No 181
Weems Co. } p 288
v.
Peoples Co.



The fig. above represents Ware's Wharf in Essex County Va:

Jno. D. Garland C.E.

Traced by:- C.J. Roelker. Jan. 22-1906.

283 PLAINTIFF'S EXHIBIT No. 9. Filed with Depositions and Returned with Special Master's Report.

This Deed, Made the 31st day of January, 1903, by and between J. I. Marks, and T. D. Marks, her husband, and The Weems Steamboat Company of Baltimore City.

Witnesseth, That for valuable consideration the said J. I. Marks and T. D. Marks, her husband, doth lease for the period of one year to the said Weems Steamboat Company of Baltimore City, the Wharf on the Rappahannock River in the County of Richmond, known as Naylor's Hole, the said Company during said lease to have the exclusive use and possession of said Wharf.

Provided, That the said J. I. Marks and T. D. Marks, her husband, reserve to themselves the privilege of allowing to land at said wharf sail vessels, provided they do not interfere with the use of said wharf by the steamers of said Weems Steamboat Company of Baltimore City.

Witness my hand and seal this 31 day of January, 1903.

T. D. MARKS. [SEAL.]
J. I. MARKS. [SEAL.]

284 (Here follow diagrams marked pp. 285, 286, 287, & 288.)

289 PLAINTIFF'S EXHIBIT No. 14. Filed with Depositions and Returned with Special Master's Report.

This Deed, Made the 21st day of January, 1903, by and between Robert L. Ware and The Weems Steamboat Company of Baltimore City.

Witnesseth, That for valuable consideration the said Robert L. Ware doth lease for the period of one year to the said Weems Steamboat Company of Baltimore City the wharf on the Rappahannock River, in the county of Essex, known as Ware's Wharf, the said company during said lease to have the exclusive use and possession of said wharf.

Provided, That the said Robert L. Ware reserves to himself the privilege of allowing to land at said wharf sail vessels, provided they do not interfere with the use of the said wharf by the steamers of said Weems Steamboat Company of Baltimore City.

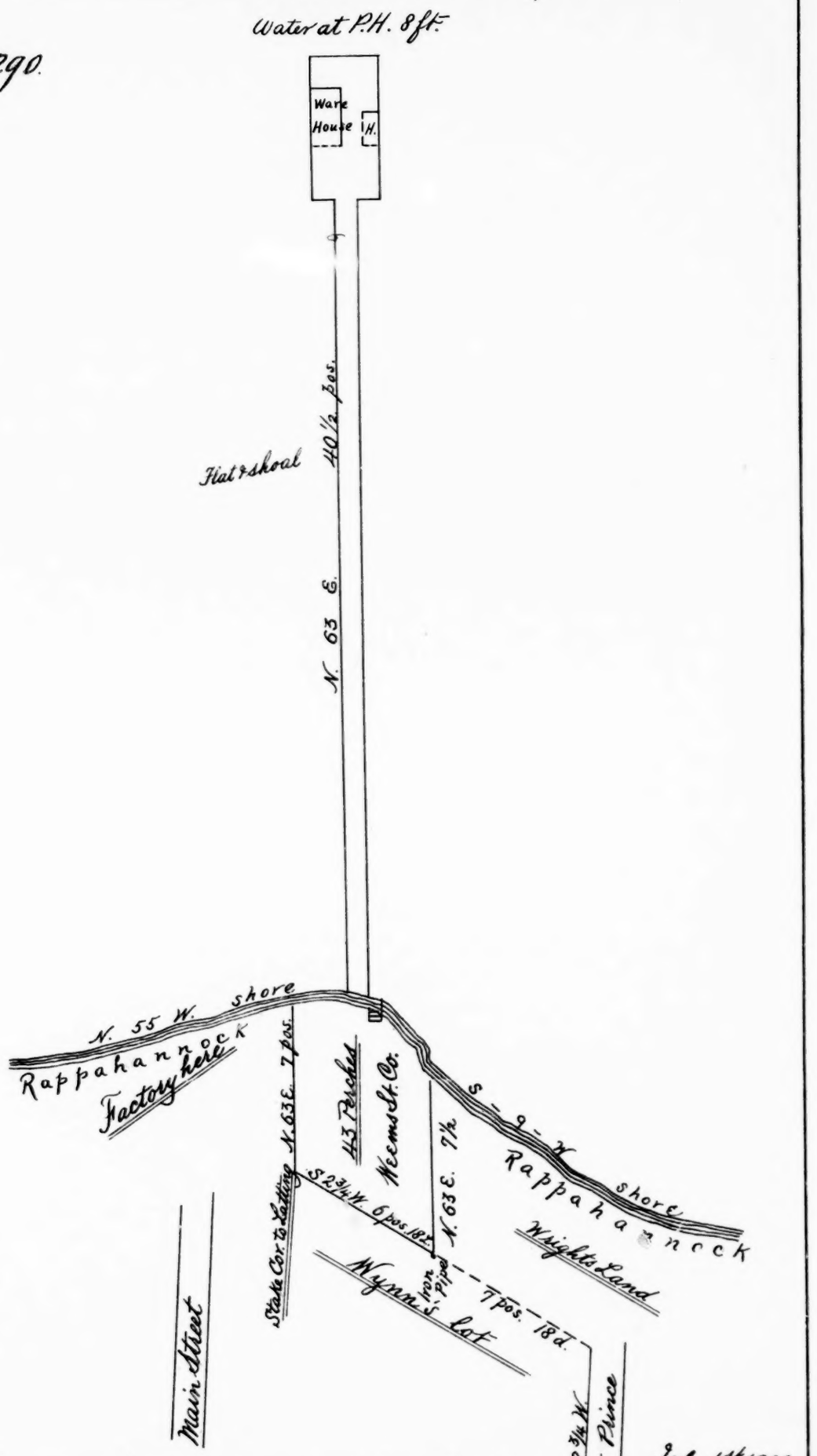
Witness my hand and seal this 31 day of January, 1903.

ROBT. L. WARE. [SEAL.]

(Here follow diagrams marked pp. 290 & 291.)

Plaintiff's Exhibit No. 15 filed with Depositions and Returned with Special Masters Report.

No 181.
Weem's Co
People's Co. } p. 290.



The above fig. represents the Property now owned by Weem's Steamboat Company at Tappahannock Virginia Consisting of Wharf & Land attached thereto July 1st 1903.
Jno. D. Garland, C.E.

See deed from R.E. Weem & Fannie B Wynn attached.

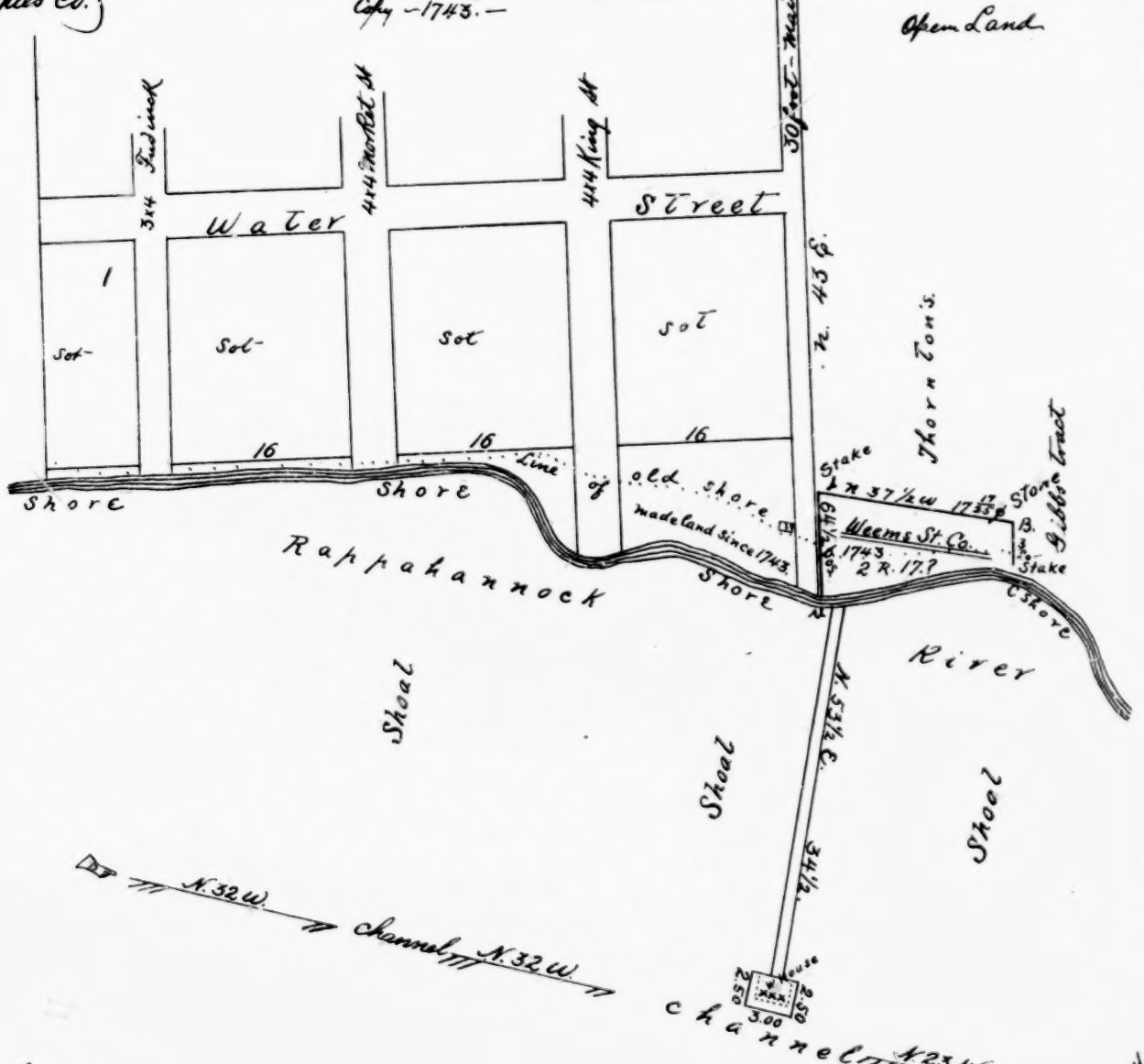
Traced by:- C.J. Roelker Jan. 22-1906.

No. 181.
Weems Co.
v.
People's Co.
p. 291.

Plaintiff's Exhibit No. 16 filed with and returned with Special Master's Deposition & Report.

Port - Royal Town

City - 1743. -



July 1st 1903.

XXX - Represents the Pier head of "Port-Royal" Wharf: Carolina County Virginia, which is in 9 - feet of Water on the front - A.B.C.D. represents the Land at foot of Wharf.

State of Virginia Caroline Co.

See deed from Government to Towne &c. filed

Jno. D. Garland. C.E.

Traced by :- C.J. Roelker - Jan. 22 - 1906.

291½ PLAINTIFF'S EXHIBIT No. 17. Filed with Depositions and Returned with Special Master's Report.

Law Offices of William Douglass Carter, Rooms 1, 2 and 3, Bradford Building.

FREDERICKSBURG, VA., *Dec. 6th,* 1902.

Mr. Henry Williams, President Weems Steamboat Company, Baltimore, Md.

DEAR SIR: I received your note, which was handed me by your Mr. W. D. Scott, and in which note you undertook to forbid the Steamer Tourist to land at wharves on the Rappahannock. Later your Mr. Fitzhugh called, and I told him we intended to land the boat and we are doing so, and intend to continue until you can stop us by some legal means.

We have tendered the wharfage, and shall continue to do so, and I hereby formally notify you as owner of Port Royal, Tappahannock, &c., wharves that we stand ready to pay you the usual and reasonable wharfage charges at any time, either by the trip, the week, or the month.

I also wish to call your attention to the fact that we are entitled to the services of the wharves when we pay for it, and shall see that freight handled by our boat is properly cared for, and our patrons and shippers protected. All we want are our legal rights, and those we shall contend for by every lawful method.

Please advise me of your pleasure as to when and to whom we shall pay the wharfage at your wharves. At the same time please recall your ~~order to~~ your agents to "stop the Tourist from landing *if you can,*" and give them such instructions as to the handling of the Tourist's freight as is proper under the law.

Yours truly,

WM. D. CARTER.

292 PLAINTIFF'S EXHIBIT No. 18. Filed with Depositions and Returned with Special Master's Report.

Whereas, after a correspondence between the undersigned, Henry Williams, President of the Weems line of steamers, and A. B. Evans, during the years 1879 and 1880, in which the said Henry Williams offered upon the condition that the said A. B. Evans would build a wharf in the Rappahannock River so that the boats of the Weems line steamers could get to it, to send said boats to said wharf regularly; and further offered to pay said Evans ten per cent. on all freight and passenger fare taken from and landed on said wharf and furnish free transportation to said Evans, his wife and his children and to his wharf agent, all of which will appear by the letters of said Williams in the possession of said Evans and by copies recently furnished said Williams by Evans; and

Whereas, in consideration of said offers, the said Evans did build the wharf referred to in said correspondence (which is Water View

Wharf, in Middlesex County, Va.) in the year 1880; and from that year until the present time the said Williams has faithfully carried out and complied with his assurances and promises contained in his said letters; and

Whereas, for reasons that have been duly considered by the undersigned it is desired that there shall be a commutation of that clause giving free transportation to said Evan's children, and in lieu thereof that the said Williams shall allow and pay annually the sum of twenty-five dollars; and

Whereas, the contract between said Evans and Williams consists only of letters, etc., above referred to, bearing dates in the years 1879 and 1880; and it is mutually desired by the undersigned that the contract shall be drawn, signed and executed in a more regular and specific form.

Now This Agreement, Made this 31st day of January, 1901, between The Weems Steamboat Company of the City of *of* Baltimore, State of Maryland, of the one part, and A. B. Evans of the County of Middlesex, State of Virginia, of the other part:

Witnesseth, That in consideration of the facts recited in the foregoing part of this paper; and in further consideration that the Waterview Wharf is kept up in such condition that the steamers of said company can land and receive freight and passengers on and from the same, the said Weems Steamboat Company will send its steamers to said wharf regularly, and will pay to said Evans ten per cent. of all money received for freight and fare of passengers received from and landed on said wharf, and furnish free transportation or passes on its steamers for said Evans and for his wife
293 and his wharf agent; and will pay to said Evans annually the sum of twenty-five dollars in lieu of furnishing free transportation to said Evans' children on the steamers of said company.

And the said Evans (A. B.), party of the other part, doth hereby agree to keep up said wharf so that the boats of the said company can come to the same in consideration that the said steamers shall be sent regularly to said wharf, and that the said company shall pay (as above agreed to) ten per cent. of freight and passenger fare to and from said wharf and furnish free passes (for travel) to himself, his wife and wharf agent, and pay annually the sum of twenty-five dollars in lieu of free transportation to his children.

And It Is Further Agreed, That during the continuance of this contract that no steamers except those owned or controlled by The Weems Steamboat Company shall have the privilege of using said wharf without the consent and approval of the President of said company.

Witness the hands and seals of the parties hereto on the day and year aforesaid.

(Signed) HENRY WILLIAMS, [SEAL.]
President of the Weems Steamboat Company of Baltimore City.

(Signed) A. B. EVANS. [SEAL.]

Witness:
J. H. C. WILLIAMS.

PLAINTIFF'S EXHIBIT No. 19. Filed with Depositions and Returned with Special Master's Report.

This Deed, Made this twenty-first day of January, 1903, by and between Miskel A. Carter and The Weems Steamboat Company of Baltimore city.

Witnesseth, That for valuable consideration the said Miskel A. Carter doth lease for the period of one year to the said Weems Steamboat Company of Baltimore City, the wharf on the Rappahannock River in the County of Richmond, known as Carter's Wharf, the said company during said lease to have the exclusive use and the possession of said wharf.

Provided, That the said Miskel A. Carter, reserves to himself the privilege of allowing to land at said Wharf sail vessels, provided they do not interfere with the use of the said Wharf by the Steamers of said Weems Steamboat Company of Baltimore City.

Witness my hand and seal this 22d day of January, 1903.

MISKEL A. CARTER. [SEAL.]

Witness present:
J. EDWARD CARTER.

294 PLAINTIFF'S EXHIBIT No. 20. Filed with Depositions and Returned with Special Master's Report.

This agreement made this 23rd day of January A. D., 1875, between the Baltimore and Susquehanna Steam Company of the one part and Henry Williams and Georgeanna Williams, his wife; and Sidney H. Forbes and Matilda S. Forbes, his wife, of the second part. Witnesseth, that the said company hath this day sold to said parties of the second part their Steamer Wenonah, her apparel and equipment as she now lies in the Port of Baltimore, together with the interest of the term in the wharf and premises, now used for her at the foot of Shear's Wharf, and together with all interest of said company and its stockholders as individuals in all wharves and warehouses and landings, whether owned or vested, on the Rappahannock River, and her tributaries, as heretofore used by said Wenonah, and the Steamer Matilda, the same being a one-half interest therein, at and for the sum of forty thousand dollars, thus payable, to-wit, two hundred shares of the National Bank of Fredericksburg stock as par, as and for twenty thousand dollars. The remaining part will be ten thousand dollars cash, to be paid on the consummation of this agreement by Bill of Sale, and delivery of the said Steamer Wenonah, and ten thousand dollars by notes at six and twelve months with interest from the day said steamer is so delivered, and security for the same to the satisfaction of said company, with liberty to said parties to anticipate the same with proper rebate of interest. Said parties of the second part are to pay for all repairs now in progress or made since the said steamer stopped running on her last trip, and they assume to pay the contract prices therefor, but not any wages due to the cap-

tain or hands; nor is this agreement to interfere with the usual accounting between the owners of said steamer down to the date hereof. And the said company covenants that its shareholders will execute all proper instruments conveying to said parties of the second part such interests as they may have in said wharves, warehouses and landings on said river now in their names respectively, and heretofore owned and used by said two steamers in common together, with the office furniture in Baltimore used with said business also.

295 In witness whereof the said parties have hereto set their hands and seals, the shareholders of said company ratifying the same and the signature of its president by adding their own individually.

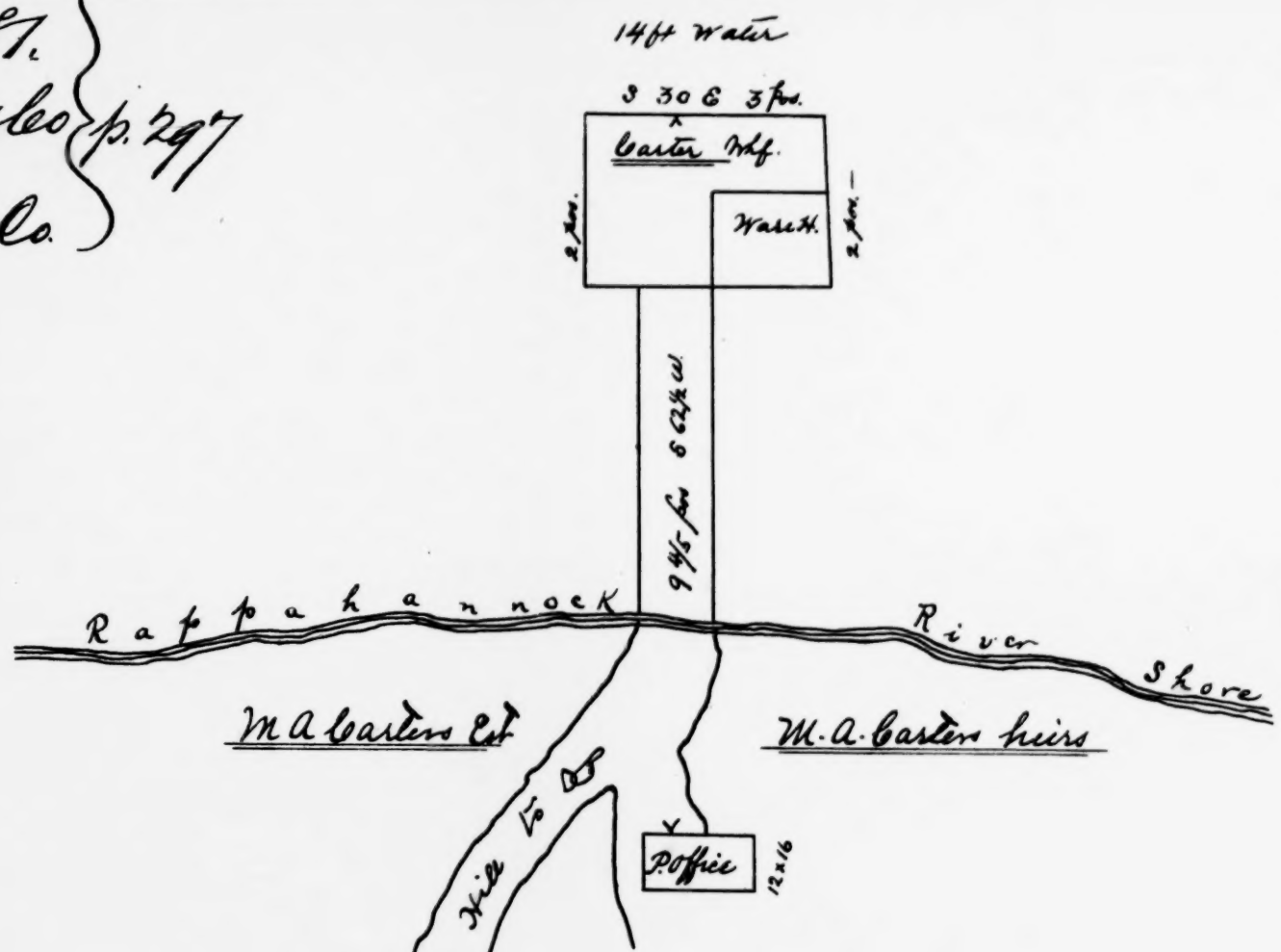
HENRY WILLIAMS.	[SEAL.]
GEORGEANNA WILLIAMS.	[SEAL.]
SYDNEY H. FORBES.	[SEAL.]
MATILDA S. FORBES.	[SEAL.]
J. TOME.	[SEAL.]
—— ——(?)	
J. TOME.	[SEAL.]
JOS. JAS. TAYLOR.	[SEAL.]
JOHN S. GETTINGS.	[SEAL.]
ROBT. A. TAYLOR.	[SEAL.]

296 (Here follows diagrams marked pp. 297, 298, 299 & 300.)

Plaintiff's Exhibit No. 21 filed with Depositions and returned with Special Master's Report.

297

No. 187.
Wellsboro
v.
People's Co.
p. 297

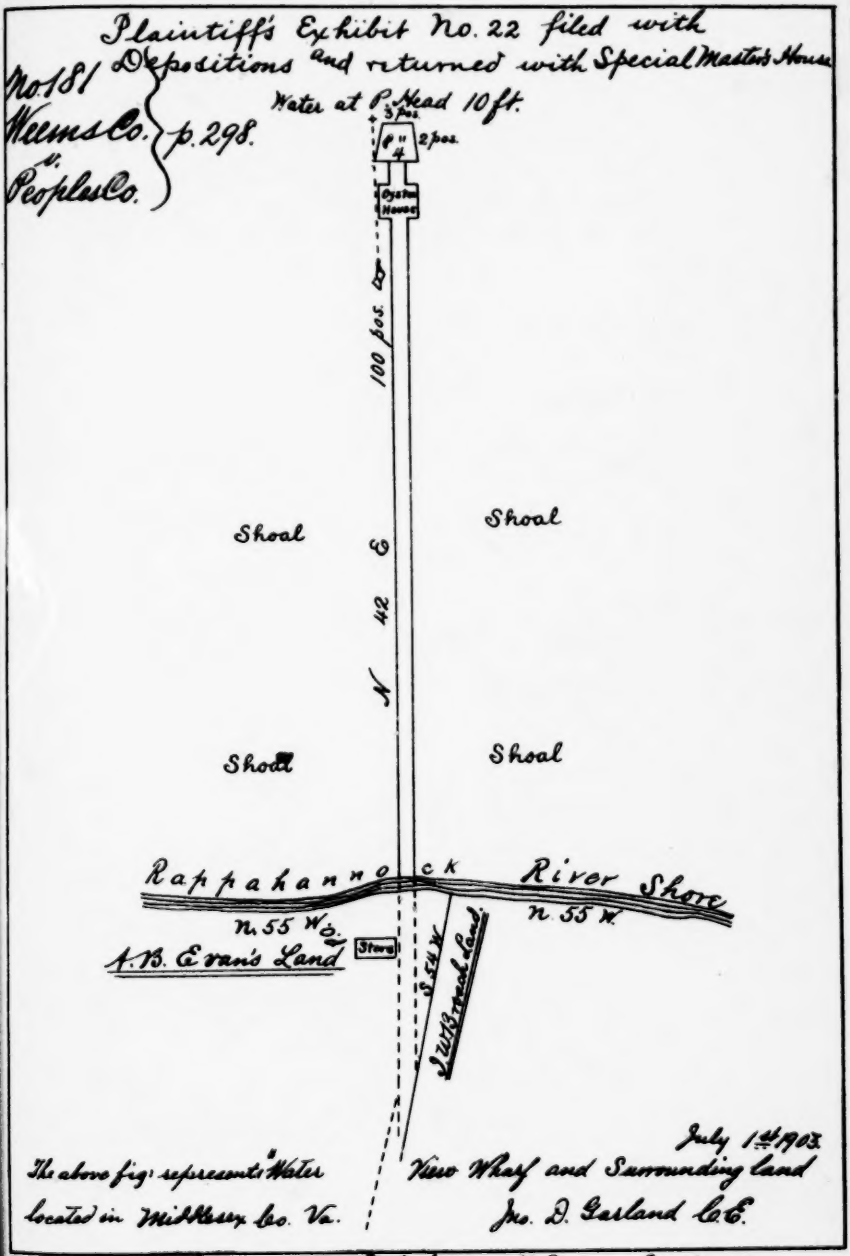


The fig above represents Carters Wharf and lands adjacent thereto on Rappahannock River in Richmond Co. Va July 1st 1903 Jno. D. Garland C.E.

Traced by :- C.J. Roelker - Jan. 20-1906.

Plaintiff's Exhibit No. 22 filed with Depositions and returned with Special Master's Report

No 181
Wells Co.
v.
Peoples Co.
p. 298.



July 1st 1903

The above fig: represents Water located in Middlesex Co. Va.

View Wharf and Surrounding land
Jno. D. Garland C.E.

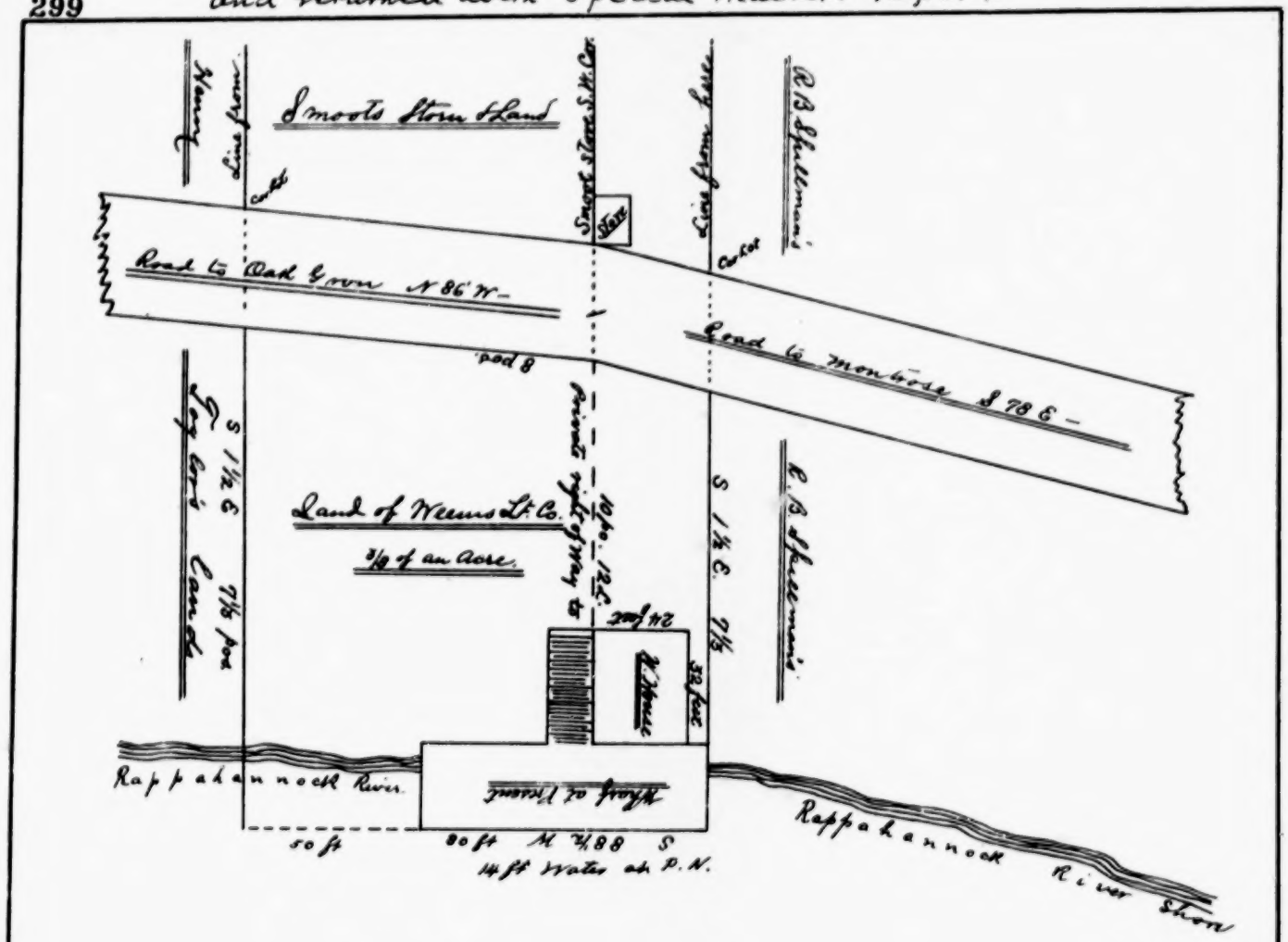
See deed from Fisher & E to O.B. Evans Enclosed

Traced by: C.J. Roelker - Jan. 20-1906

No. 181
Weems Co. } ft 299
Peebles Co.

Plaintiffs Exhibit No. 23 filed with Depositions and returned with Special Master's Report

299



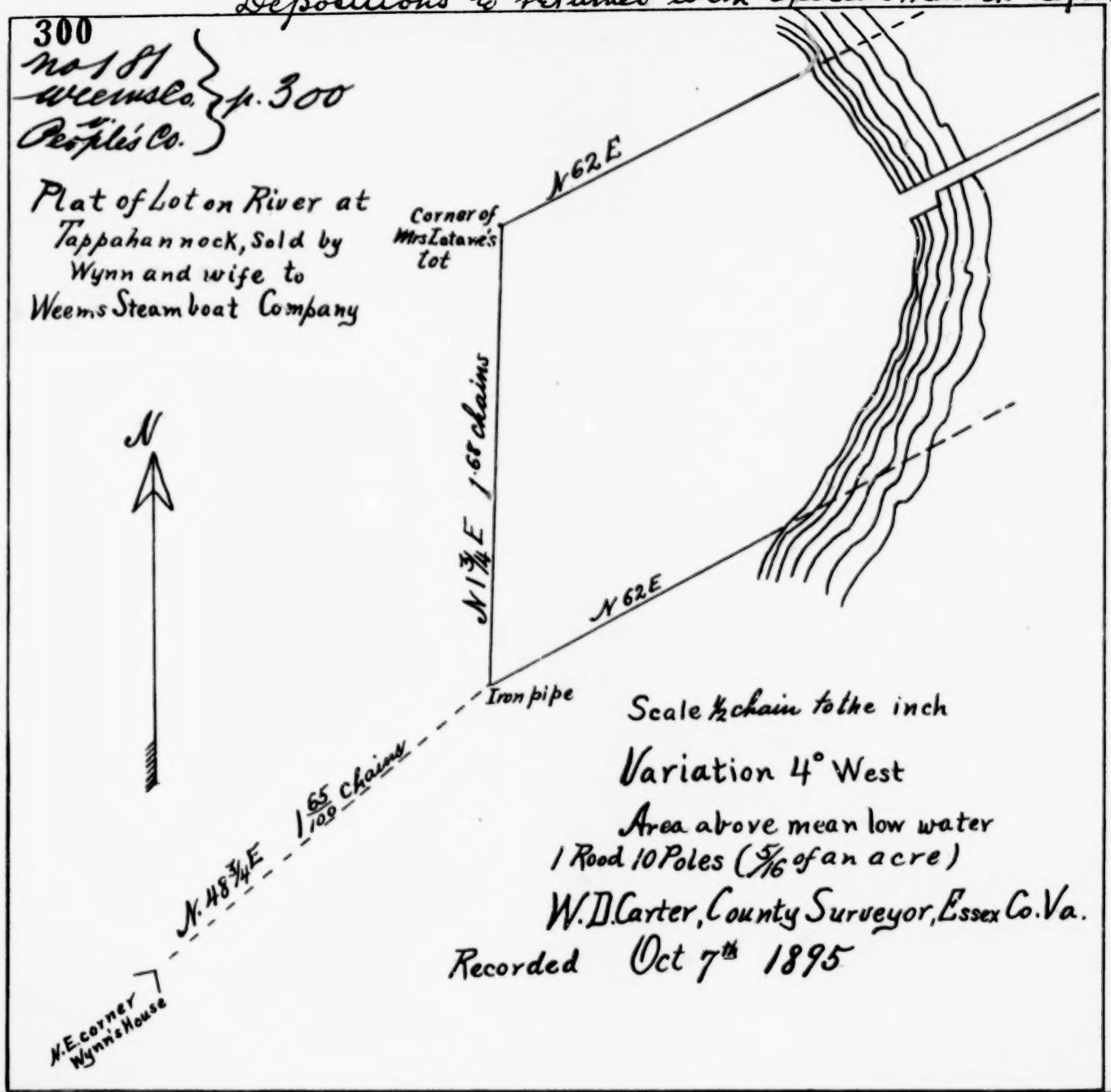
The fig above represents Weems Steamboat Wharf & property at Lord. Town Westmoreland County Virginia

July 1st 1903 Jas D. Garland C.E.

Traced by C.J. Roelker – Jan. 20th 1906.

Plaintiff's Exhibit No. 24 filed with Depositions and returned with Special Master's Report.

300
no 181 Weems Co. } p. 300
People's Co.


Plat of Lot on River at Tappahannock, Sold by Wynn and wife to Weems Steamboat Company
Corner of Mrs Letane's lot
N 62 E
N 1¾ E 1.68 chains
N 62 E
Iron pipe
N. 48¾ E 1 65/100 chains
N.E. corner Wynn's House
N
Scale ½ chain to the inch
Variation 4° West
Area above mean low water
1 Rood 10 Poles (5/16 of an acre)
W. D. Carter, County Surveyor, Essex Co. Va.
Recorded Oct 7th 1895

301 PLAINTIFF'S EXHIBIT No. 25. Filed with Depositions and Returned with Special Master's Report.

Article of agreement, made this 13 day of April, A. D., 1892, between Henry Williams, Agt., &c., of the Weems Steamboat Company of Baltimore, Md., of the first part and John H. Whealton of the County of Lancaster, State of Va., of the second part, as follows, to-wit:

The party of the first part agrees to furnish, free of interest, one-half cost of building pier head, said cost not to exceed six hundred dollars, to allow John H. Whealton ten per cent. to be credited on the amount advanced by the party of the first part until it is paid in full. The party of the second part agrees to build a substantial pier head at place agreed upon, to furnish right of way to same from the public roads, to furnish a safe and reliable man to receive and deliver freights, &c.

It is further agreed that the Weems line of steamers shall have exclusive right to stop at said wharf or pier, except that sail boats can stop there, provided they do not, in any way, interfere with the stopping of the steamers.

Witness our hands and seals.

THE WEEMS STEAMBOAT COMPANY
OF BALTIMORE CITY,
By HENRY WILLIAMS, *President.* [SEAL.]
JOHN H. WHEALTON. [SEAL.]

Witness:
T. S. CURLETT.

PLAINTIFF'S EXHIBIT No. 26. Filed with Depositions and Returned with Special Master's Report.

This deed, made this 11th day of December, 1865, between Annette L. Faunt Leroy, of this county of Richmond and State of Virginia, of the one part and Robery K. Nevitt, of Washington county, District of Columbia, of the other part; Witnesseth, that in consideration of the sum of nine thousand five hundred dollars, to her in hand paid or secured to be paid, the said Annette L. Faunt Leroy doth grant, bargain, sell and convey unto the said Robert K. Nevitt all that parcel or *a*ract of land lying in the county of Richmond and State of Virginia known as Naylor's Hole, containing two
302 hundred and thirty acres of land, be the same more or less, and bounded and described as follows: Beginning at the mouth of Rappahannock Creek and running up the said creek to the warehouse landing and to the road that leads to the said warehouse landing; thence up the warehouse road to a pine tree at the head of a slash; thence along the meadow ditch, including the meadow, and to the head of a creek called the Doctor's Creek; thence down said creek to the mouth thereof that empties itself into Rappahannock River; thence down said river to the place of beginning, at

the mouth of Rappahannock Creek, to him the said Robert K. Nevitt and his heirs forever, free from the claim or claims of any persons whatsoever; and the said Annette L. Faunt Leroy doth warrant and forever defend the title to the land hereby conveyed.

Witness the following signature and seal.

ANNETTE L. FAUNT LEROY. [SEAL.]

COUNTY OF RICHMOND, *To-wit:*

I, Samuel G. Dishman, a justice of the peace for the county aforesaid, in the State of Virginia, do certify that Annette L. Fauntle Roy, whose name is signed to the writing above, bearing date on the 11th day of December, 1865, has acknowledged the same before me in my county aforesaid.

Given under my hand this 12th day of December, 1865.

SAML. G. DISHMAN, *J. P.*

Clerk's Office, County Court of Richmond County, the 5th day of March, 1866.

This deed of bargain and sale from Annette L. Fauntle Roy to Robert K. Nevitt, was this day presented in the office aforesaid, and with the certificate annexed admitted to record, the same being duly stamped pursuant to the laws of the United States.

Teste: ROBERT HALL, *Clerk.*

A Copy—Teste:

J. B. RAINS, *Clerk.*

303 PLAINTIFF'S EXHIBIT No. 27. Filed with Depositions and Returned with Special Master's Report.

This deed, made this 11th day of December, 1865, between Robert K. Nevitt of the one part and Henry H. Fauntleroy of the other part; Witnesseth, that the said Robert K. Nevitt doth grant unto the said Henry H. Fauntleroy all that tract or parcel of land lying in the county of Richmond and State of Virginia known as Naylor's Hole, being the same tract of land conveyed by Annette L. Fauntleroy to the said Robert K. Nevitt, as shown by a deed of even date with this deed. In trust to secure to the said Annette L. Fauntleroy the payment of the sum of seven thousand five hundred dollars due by three bonds executed by the said Robert K. Nevitt to the said Annette L. Fauntleroy, as follows, to-wit: One of two thousand five hundred dollars, payable in one year, another of the same amount, payable in two years, and the third for the same amount, payable in three years, all of said bonds bearing interest from date, to-wit., the 11th day of December, 1865. And it is further covenanted and agreed by the said Robert K. Nevitt that in the event of his failure to pay the said debt of seven thousand five hundred dollars, or any part thereof, when the same shall become payable, the said H. H. Fauntleroy, or his personal representative, when requested so to do,

shall sell for cash at public auction, after having given reasonable notice of the time and place of sale, the said tract of land hereby conveyed, and pay to the said Annette L. Fauntleroy whatever amount of the said debt shall be due on the day of sale, and the balance, if any, pay to the said Robert K. Nevitt.

Witness the following signature and seal.

ROB'T K. NEVITT. [SEAL.]

N. B.—The interlineations of the words "bonds," "dollars" and "notice" made before signing.

SAM'L G. DISHMAN, *J. P.*

COUNTY OF RICHMOND, *To-wit:*

I, Samuel G. Dishman, a Justice of the Peace for the county of Richmond, in the State of Virginia, do certify that Robert K. Nevitt, whose name is signed to the writing within, bearing date on the 11th day of December, 1865, has acknowledged the same before me in my county aforesaid.

Given under my hand this 12th day of December, 1865.

SAM'L G. DISHMAN, *J. P.*

304 Clerk's Office, County Court of Richmond County, the 5th Day of March, 1865.

This deed of trust from Robert K. Nevitt to Henry H. Fauntleroy for the benefit of Annette L. Fauntleroy was this day presented to the office aforesaid and with the certificate annexed is admitted to record, the same having been first duly stamped pursuant to the laws of the United States.

Teste:

ROBERT HALL, *Clerk.*

A Copy—Teste:

J. B. RAINS, *Clerk.*

PLAINTIFF'S EXHIBIT No. 28. Filed with Depositions and Returned with Special Master's Report.

Whereas by deed of trust dated the 11th day of December, 1865, one Robt. K. Nevitt did convey a certain tract of land in Richmond county, Virginia, called "Naylor's Hole" to Henry H. Fauntleroy in trust to secure to Mrs. Annette L. Fauntleroy the payment of the sum of $7,500 due by three bonds of the said Nevitt to the said A. L. Fauntleroy each for the sum of $2,500. And whereas the sum of $5,375.55 being due and unpaid by the said Nevitt on said bonds. And whereas the said H. H. Fauntleroy, by direction of the said A. L. Fauntleroy and in pursuance of the terms of the said deed of trust, having duly advertised the said tract of land (Naylor's Hole), and having sold the same at Warsaw, Va., to the highest bidder; and whereas the said tract of land was purchased by the said A. L. Fauntleroy for the sum of $5,000; now, therefore, this deed, made this 4th

day of April, 1870, between the said Henry H. Fauntleroy, trustee as aforesaid, and the said Annette L. Fauntleroy. Witnesseth, that the said H. H. Fauntleroy for and in consideration of the sum of five thousand dollars to him in hand paid by the said A. L. Fauntleroy, the receipt whereof is hereby acknowledged, hath this day sold, and by these presents doth grant and convey unto the said A. *S.* Fauntleroy all that said tract or parcel of land called "Naylor's Hole," in the said county of Richmond, being the same tract of land conveyed to the said H. H. Fauntleroy by the said Nevitt by the said deed of trust. To have and to hold the said tract of land ("Naylor's Hole") to her the said Annette L. Fauntleroy and her heirs in fee simple forever with special warranty.

Witness the following signature and seal.

H. H. FAUNTLEROY. [SEAL.]

305 Clerk's Office, County Court of Richmond County, April 6th, 1870.

This deed from H. H. Fauntleroy to A. L. Fauntleroy, and bearing date the 4th day of April, 1870, was this day presented in the office aforesaid and acknowledged therein before me by H. H. Fauntleroy, whose name is signed thereto, and the same being duly stamped was thereupon admitted to record.

Teste:

L. D. WARNER, *Clerk.*

A Copy—Teste:

J. B. RAINS, *Clerk.*

PLAINTIFF'S EXHIBIT NO. 29. Filed with Depositions and Returned with Special Master's Report.

This deed made this 1st day of August, 1884, by and between Annette L. Fauntleroy, late of Richmond county and now of Fredericksburg, Virginia, of the first part, and John R. Peed, of Richmond county, Virginia, of the second part; witnesseth, that for and in consideration of the sum of five thousand dollars, cash in hand paid, to the said party of the first part by the said party of the second part, the receipt whereof is hereby acknowledged, the said Annette L. Fauntleroy hath sold, granted, transferred and conveyed to said John R. Peed, with general warranty, all that certain tract or parcel of land situated in Richmond county, Virginia, known as "Naylor's," containing about two hundred and thirty acres, be the same more or less, which is bounded on the South by the Rappahannock River, between the mouth of Rappahannock Creek and Doctor's Creek, on the East by said Rappahannock Creek and the county road, which runs from the ferry at said last mentioned creek between said "Naylor's" and the land of Dr. Baird known as "Strangeways," on the North by said last mentioned road, and on the West between a point on said road called "Slashes" and mouth of said Dr. Creek by *by* the lands of Dr. Baynham known as "Waterview," the line between, the said last mentioned points being a marked line with all

buildings thereon, and all rights and privileges thereunto belonging or appertaining. To have and to hold to him the said John R. Peed and his heirs forever.

Witness the following signature and seal the day and year first above written.

ANNETTE L. FAUNTLEROY. [SEAL.]

306 STATE OF VIRGINIA,
Corporation of Fredericksburg, To-wit:

I, A. B. Botts, a Notary Public in and for said corporation, do certify that Annette L. Fauntleroy, whose name is signed to the foregoing deed, dated 1st August, 1884, this day acknowledged the same before me in my said corporation.

Given under my hand this 1st day of August, 1884.

A. B. BOTTS, *N. P.*

Clerk's Office of the County Court of Richmond County, August 4th, 1884.

The foregoing deed of bargain and sale bearing date Aug. 1st, 1884, and executed by Annette L. Fauntleroy to John R. Peed was this day presented in the office aforesaid, and together with the certificate annexed admitted therein to record.

Teste:

L. D. WARNER, *Clerk.*

A Copy—Teste:

J. B. RAINS, *Clerk.*

PLAINTIFF'S EXHIBIT No. 30. Filed with Depositions and Returned with Special Master's Report.

VIRGINIA:

At a Circuit Court begun and held for Richmond County at the Courthouse Thereof on Thursday, the 18th Day of October, 1888.

PEED & Others, Complainants,
vs.
CARTER & Others, Defendants.

This cause came on this day to be heard on the papers formerly read and the report of Thomas E. Pullen, R. C. Peed, P. G. Reamy and R. Carter Wellford, four of the Commissioners appointed by the decree entered herein on the 19th day of April, 1888, of the partition of the land in the proceedings mentioned among the several parties entitled thereto agreeably to the terms of the said decree, and was argued by counsel. On consideration whereof, it appearing to the Court that the fair money value of the dower interest of Almira Peed, the widow of John R. Peed, deceased, in the real estate of her said deceased husband is $2,630 as valued by the said commissioners,

and that the farm called Naylor's Hole in the county of Rich-
307 mond has been laid off and assigned to Lettie A. Carter and Jenette I. Marks, they agreeing to take their shares together; that the farm called Smith's Mount, in the county of Westmoreland, fell to the shares of Susan A. Peed and Bertha P. Peed and was by said commissioners laid off and assigned to them together, and that the house in the city of Baltimore and State of Maryland, numbered 504 N. Schroder street, the farm near Foneswood and the small tract near Beaver Dam fell to Joseph W. Peed, it is adjudged, ordered and decreed that the said report of the said commissioners be confirmed, and that the partition in manner and form aforesaid made be held firm and stable. And the Court doth further adjudge, order and decree that Lettie A. Carter and Janette I. Marks do each pay unto the said Almira Peed the sum of $896; that the said Susan A. Peed and Bertha P. Peed do each pay unto the said Almira Peed the sum of $396, and that the said Joseph W. Peed do pay unto the said Almira Peed the sum of $46.00, these sums being respectively due the said Almira Peed by the other parties to this petition as owelty of partition on the division of the aforementioned land. And it is ordered that the costs of this suit be proportionally borne by the parties in interest thereto, and that the parties in interest to his suit, plaintiffs and defendants, do pay to Thomas E. Pullen, R. C. Peed, P. G. Reamy and R. Carter Wellford, the Commissioners aforesaid, each the sum of five dollars for their services in making the partition aforesaid.

A Copy—Teste:

J. B. RAINS, *Clerk.*

PLAINTIFF'S EXHIBIT No. 31. Filed with Depositions and Returned with Special Master's Report.

This deed, made this 13th day of December, 1888, between Lettie A. Carter and James W. Carter, her husband, of the first part, and Janette I. Marks, of the second part; Witnesseth, that the said Lettie A. Carter and James W. Carter, her husband, in consideration of the sum of three thousand dollars to them paid, or secured to be paid, by the said Jenette I. Marks, do grant, bargain, sell and convey unto the said Janette I. Marks, with general warranty, one moiety of a tract of land called "Naylor's Hole," situated in Stonewall Magisterial District, in the county of Richmond, and supposed to contain 230 acres, and bounded on the south by the Rappahannock River, on the east by Rappahannock Creek, on the north and west by the lands of Benjamin R. Baird, the same being all the interest of the said Lettie A. Carter and her said husband as assigned and set apart to the said Lettie A. Carter in the said farm called "Naylor's
308 Hole" by and under a decree pronounced by the Circuit Court of Richmond county on the 18th day of October, 1888, in the chancery cause of Peed, &c., *vs.* Carter & als., together with all the appurtenances to the said moiety belonging or in any wise appertaining. To have and to hold the said moiety or interest in land unto the said Jenette I. Marks as her sole and separate property forever.

Witness the hands and seals of the parties the day and year first above written.

LETTIE A. CARTER. [SEAL.]
J. W. CARTER. [SEAL.]

RICHMOND COUNTY, *To-wit:*

I, L. D. Warner, Clerk of the County Court of Richmond county, in the State of Virginia, do certify that in the Clerk's office of said Court in said county Lettie A. Carter and J. W. Carter, parties to the annexed writing, bearing date Dec. 13th, 1888, came this day before me and separate and apart acknowledged the same to be their act and deed.

Given under my hand this 22nd day of December, 1888.

L. D. WARNER, *Clerk.*

Clerk's Office, County Court of Richmond County, November 23rd, 1889.

The foregoing deed, dated Decr. 13th, 1888, was this day presented for record in the office aforesaid, and, together with the certificate annexed, admitted to record at 11 A. M.

Teste:

L. D. WARNER, *Clerk.*

A Copy—Teste:

J. B. RAINS, *Clerk.*

309 PLAINTIFF'S EXHIBIT No. 32. Filed with Depositions and Returned with Special Master's Report.

This deed, made this 13th day of December, 1888, between Jenette I. Marks and T. D. Marks, her husband, of the one part and W. A. Jones of the other part; Witnesseth, that the said parties of the first part do grant and convey unto the said W. A. Jones the following property, to-wit: All that tract or parcel of land lying and being in Stonewall Magisterial District, in the county of Richmond, known as Naylor's Hole, and bounded on the south by the Rappahannock River, on the east by Rappahannock Creek, and on the north and west by the lands of Benjamin R. Baird, the same being that part of the real estate of which the late John R. Peed died *sie*zed and possessed, which was assigned to Lettie A. Carter and the said Jenette I. Marks by a decree of the Circuit Court of Richmond county pronounced on the 18th day of October, 1888, in the chancery cause of Peed, &c., *v.* Carter & *als.*, and supposed to contain 230 acres, in trust to secure, first to Mrs. Almira Peed the payment of two bonds for three hundred dollars each, bearing even date with this deed, executed by T. D. Marks and Jenette I. Marks and payable on the 1st day of January, 1889, and the 1st day of January, 1890, respectively; secondly, to secure to James W. Carter the payment of ten bonds for three hundred dollars each, bearing even date with this deed and executed by T. D. Marks and Jenette I. Marks and payable

on the 1st day of January, 1891, the 1st day of January, 1892, the 1st day of January, 1893, the 1st day of January, 1894, the 1st day of January, 1895, the 1st day of January, 1896, the 1st day of January, 1897, the 1st day of January, 1898, the 1st day of January, 1899, and the 1st day of January, 1900, respectively; thirdly, to secure to Almira Peed the payment of two bonds for $300 each executed by T. D. Marks and Jenette I. Marks and payable on the 1st day of January, 1899, and the 1st day of January, 1900, respectively. And it is covenanted and agreed between the parties aforesaid that in the event the said parties of the first part shall make default in the payment of the bonds herein secured, or of any one of them, or any part thereof, when the same shall become due and payable, that then the said trustee shall, if so required by the beneficiary in any bond as to which any default shall be made as aforesaid, proceed to sell the land herein conveyed, after giving reasonable notice of the time and place and terms of sale, and upon the following terms, to-wit: For cash as to so much of the proceeds as may be necessary to defray the expenses of this trust, including a commission of
310 5 per cent. to the trustee, and to discharge the amount of money, principal and interest then payable upon the said bonds and the remainder on a credit corresponding to the dates of maturity of the bonds which may then not be due; and if there be any residue of said purchase money, the same shall be made payable at such time or times as the parties of the first part may designate, and in case there should be no such designation as to the said trustee may seem fit and proper. And the said parties of the first part agree to pay all taxes and charges upon the said property hereby conveyed, so long as they or their heirs or assigns hold the same.

Witness the following signatures and seals the day and year first above written.

JENETTE I. MARKS. [SEAL.]
T. D. MARKS. [SEAL.]

Clerk's Office, County Court of Richmond County, December 24th, 1888.

This day came Jenette I. Marks and T. D. Marks, parties to the annexed deed, bearing date December 13th, 1888, and personally acknowledged the same before me, L. D. Warner, Clerk of said Court, in the office aforesaid, and thereupon this deed of trust is admitted to record as to them at 4 o'clock P. M.

Teste: L. D. WARNER, *Clerk.*

A Copy—Teste: J. B. RAINS, *Clerk.*

PLAINTIFF'S EXHIBIT No. 33. Filed with Depositions and Returned with Special Master's Report.

Naylor's Hole Wharf Property.

Owned in 1865 by Annette L. Fauntleroy.

Deeds:

Dec. 11, 1865—Annette L. Fauntleroy to Robert K. Nevitt conveying, with general warranty, "Naylor's Hole."
(See Deed Book 30, p. 540.)

Dec. 11, 1865—Robert K. Nevitt to H. H. Fauntleroy, Trustee, to secure Annette L. Fauntleroy, conveying, with general warranty, "Naylor's Hole," in trust.
(See Deed Book 30, p. 541.)

311 Apr. 4, 1870—H. H. Fauntleroy, Trustee, to Annette L. Fauntleroy, conveying, with special warranty, "Naylor's Hole."
(See Deed Book 31, p. 91.)

Aug. 1, 1884—Annette L. Fauntleroy to John R. Peed, conveying, with general warranty, "Naylor's Hole."
(See Deed Book 33, p. 483.)

(On Oct. 18, 1888, there was a decree vesting title to the property above named in Jeanette I. Marks and Lettie A. Carter, the two last mentioned being daughters and heirs of John R. Peed, deceased.)
(See Chancery Order Book, p. 384.)

Dec. 13, 1888—Lettie A. Carter and James W., her husband, to Jeanette I. Marks, conveying, with general warranty, one moiety in the "Naylor's Hole" tract.
(See Deed Book 34, p. 547.)

Dec. 13, 1888—Jeanette I. Marks and Thomas D., her husband, to W. A. Jones, Trustee, conveying, with general warranty, the Naylor's Hole tract in trust to secure Almira Peed and others.
(See Deed Book 34, p. 415.)

O. L. SHACKLEFORD, *Att'y.*

PLAINTIFF'S EXHIBIT No. 34. Filed with Depositions and Returned with Special Master's Report.

This deed, made this 5th day of March, 1873, between Emmet Crump, Assignee in Bankruptcy of Tasker C. Crabbe, of Warsaw, in the county of Richmond and State of Virginia, who was adjudged a bankrupt by W. W. Forbes, one of the registers in bankruptcy, in the United States District Court for the District of Virginia, on 31st day of July, 1872, party of the first part, and A. N. Wellford, party of the second part; Witnesseth, Whereas by virtue of the power con-

ferred upon me as assignee aforesaid by an Act of Congress, entitled "An Act to establish a uniform system of bankruptcy thorough the United States," approved March 2nd, 1867, as also by Deed of
312 Assignment to me by said register, dated 15th day of August, 1872, I did sell, by order of the United States District Court, dated 13th day of January, 1873, at public auction, in the City of Richmond, all the said Bankrupt Tasker C. Crabbe right, title and interest in the real estate hereinafter described. And whereas said sale was confirmed by the said United States District Court on the 5th day of March 1873; now, therefore, in consideration of the sum of thirteen dollars to me paid by A. N. Wellford (who was the highest bidder at said sale), the receipt whereof is hereby acknowledged, do grant, with special warranty, unto the said A. N. Wellford that certain (1/5) interest by reversion in the farm known as "Pittsville," in Richmond county, Virginia, which is supposed to contain 250 acres, be the same, more or less, with all the appurtenances whatsoever belonging, or in any wise appertaining, to have and to hold the same to the said A. N. Wellford, his heirs and assigns, to his and their use forever.

Witness the following signature and seal on the day and date above mentioned.

EMMET CRUMP, [L. S.]
Assignee of Tasker C. Crabbe.

STATE OF VIRGINIA,
City of Richmond, To-wit:

I, J. M. Skinner, a Notary Public for the city aforesaid, in the State of Virginia, do certify that Emmet Crump, assignee of Tasker C. Crabbe, whose name is signed to the writing hereto annexed, bearing date on the 5th day of March, 1873, has acknowledged the same before me in my city aforesaid.

Given under my hand this 6th day of March, 1873.

J. M. SKINNER, *N. P.*

Clerk's Office, County Court of Richmond County, the 12th day of March, 1873.

This deed of bargain and sale from Emmet Crump, Assee. in Bankruptcy of T. C. Crabb to A. N. Wellford, bearing date the 5th day of March, 1873, was this day presented in the office aforesaid and, with the certificate thereto annexed, admitted to record.

Teste: B. W. BROCKENBROUGH, *D. C.*

A Copy—Teste: J. B. RAINS, *Clerk.*

313 PLAINTIFF'S EXHIBIT NO. 35. Filed with Depositions and Returned with Special Master's Report.

This deed, made the 7th day of September, 1878, between Sallie P. Crabb of the one part and A. N. Wellford of the other part; Witnesseth, that in consideration of the sum of two hundred dollars to

her in hand paid by the said A. N. Wellford, the receipt whereof is hereby acknowledged, she, the said Sallie P. Crabb, doth hereby bargain, sell, grant and convey, and by these presents hath bargained, sold and conveyed unto the said A. N. Wellford, with general warranty, all of her right, title and interest in a tract of land called Pittsville, lying in Marshall Magisterial District, Richmond county, and bounded by the Rappahannock River, Stanly Hall, Level Green and the lands of said A. N. Wellford, the same being an undivided fifth of said tract of land in reversion at the death of her father, William M. M. Crabb, and inherited by the said Sallie P. Crabbe from her mother, the late Ann T. Crabbe, who was Ann T. Peck.

Witness the following signature and seal the day and year first above written.

SALLIE P. CRABB. [SEAL.]

Clerk's Office, County Court of Richmond County, September 7th, 1878.

The foregoing deed was this day executed and acknowledged in said office before me by Sallie P. Crabb, whose name is signed thereto and is admitted to record.

Teste: L. D. WARNER, *Clerk.*

A Copy—Teste: J. B. RAINS, *Clerk.*

PLAINTIFF'S EXHIBIT No. 36. Filed with Depositions and Returned with Special Master's Report.

This deed, made this 24th day of May, 1879, between R. L. Belfield and Mary P., his wife, of the one part and A. N. Wellford of the other part; Witnesseth, that in consideration of the sum of two hundred dollars in hand paid by the said A. N. Wellford, the receipt whereof is hereby acknowledged, they, the said R. L. Benfield and Mary P., his wife, have bargained, sold, granted and conveyed, and by these presents do bargain, sell, grant and convey unto the
314 said A. N. Wellford, with general warranty, all of their right, title and interest in a tract of land called Pittsville, lying in Marshall Magisterial District, in the county of Richmond, and bounded by the Rappahannock River, Stanly Hall, Level Green, and the lands of the said A. N. Wellford, the same being one undivided fifth of said tract of land in reversion at the death of W. M. M. Crabb, the father of the said Mary P., wife of R. L. Bellfield, who was Mary P. Crabb, which said undivided fifth interest was inherited by the said Mary P., wife of R. L. Bellfield, from her mother, the late Ann T. Crabb, who was Ann T. Peck.

Witness the following signatures and seals the day and year first above written.

R. L. BELFIELD. [SEAL.]
M. P. BELFIELD. [SEAL.]

STATE OF VIRGINIA,
City of Richmond, To-wit:

I, W. A. Jones, a Notary Public in and for the county and State aforesaid, do hereby certify that R. L. Belfield and M. P. Belfield, his wife, parties to a certain deed, bearing date the 24th day of May, 1879, and hereto annexed, personally appeared before me in the county aforesaid and acknowledged the same to be their act and deed; and I further certify that the said M. P. Belfield being examined by me privily and apart from the husband, and having the deed aforesaid fully explained to her, acknowledged said deed to be her act, and declared that she had willingly executed the same, and that she wished not to retract it.

Given under my hand this 26th day of May, 1879.

W. A. JONES,
Notary Public.

Clerk's Office, County Court of Richmond County, May 27, 1879.

The foregoing deed of bargain and sale from R. L. Belfield and wife to A. N. Wellford was this day presented in the office aforesaid and, together with the certificate annexed, admitted to record.

Teste: L. D. WARNER, *Clerk.*

A Copy—Teste: J. B. RAINS, *Clerk.*

315 PLAINTIFF'S EXHIBIT NO. 37. Filed with Depositions and Returned with Special Master's Report.

This deed, made this the first day of December, 1879, between Milton H. Yeatman and Catherine H., his wife, of the one part and A. N. Wellford of the other part; Witnesseth, that in consideration of the sum of two hundred dollars to them in hand paid by the said A. N. Wellford, the receipt whereof is hereby acknowledged, they, the said Milton H. Yeatman and Catherine, his wife, do hereby grant, bargain, sell, release and confirm unto the said A. N. Wellford, his heirs and assigns, forever, with general warranty, all of their right, title and interest in a tract of land known as Pittville, lying in Marshall Magisterial District, in the county of Richmond, and bounded by the Rappahannock River, Stanley Hall, Level Green and the lands of the said A. N. Wellford, the same being one undivided fifth of the said land in reversion at the death of W. M. M. Crabb, the father of the said Catharine H. Yeatman, wife of Milton H. Yeatman, who was Catharine H. Crabb, which said undivided fifth interest in said tract of land was inherited by the said Catharine H., wife of the said Milton H. Yeatman, from her mother, the late Ann T. Crabb, who was Ann T. Peck.

Witness the following signatures and seals this the day and year first above written.

MILTON H. YEATMAN. [SEAL.]
CATHARINE H. YEATMAN. [SEAL.]

Clerk's Office, County Court of Richmond County, December 2nd, 1879.

This day in said county personally appeared Milton H. Yeatman and Catharine H., his wife, parties to the foregoing deed, dated Dec*t*. 1st, 1879, and acknowledged the same before me, the Clerk of said Court, at my office aforesaid, and I certify that the said Catharine H. Yeatman being examined by me privily and apart from her husband, and having had said deed fully explained to her, declared that she had willingly executed the said deed, and that the same was her free act, and that she wished not to retract it, therefore said deed is admitted to record in said office as to Milton H. Yeatman and Catharine H. Yeatman.

Teste: L. D. WARNER, *Clerk*.

A Copy—Teste: J. B. RAINS, *Clerk*.

316 PLAINTIFF'S EXHIBIT No. 38. Filed with Depositions and Returned with Special Master's Report.

This deed, made this 18th day of November, 1882, between W. A. Jones, Special Commissioner, appointed by the Circuit Court of Richmond County, in the suit of Mitchell *v*. Mitchell of the one part and A. N. Wellford of the other part; Whereas the Circuit Court of Richmond County by a decree pronounced on the 18th day of October, 1882, in the aforesaid suit of Mitchell *v*. Mitchell hath directed the said W. A. Jones to convey by deed to A. N. Wellford the one-fifth undivided interest of the infant children of Wm. B. Mitchell in the farm known as Pittsville upon the filing by the said A. N. Wellford in the papers of the aforesaid suit, a receipt for the purchase money of the said interest; and whereas the said A. N. Wellford hath filed the said receipt as required by said decree. Now this deed witnesseth that in consideration of the premises and in the further consideration of the sum of two hundred dollars paid Wm. B. Mitchell, guardian, by the said A. N. Wellford, the said W. A. Jones as commissioner as aforesaid, doth hereby grant and convey, with special warranty, unto the said A. N. Wellford, the one-fifth undivided interest of John C. Mitchell, Elanor B. Mitchell and Wm. T. Mitchell, infant children of Wm. B. Mitchell, in the farm known as Pittsville and situated on the Rappahannock River, in Marshall Magisterial District, in the county of Richmond, and said to contain in all 183 acres of land.

Witness the following signature and seal the day and year first above written.

W. A. JONES. [SEAL.]

Clerk's Office, County Court of Richmond County, December 6th, 1882.

This day W. A. Jones, whose name is signed to the foregoing deed, bearing date Nov'r 18th, 1882, personally came before me in the

office aforesaid and acknowledged the same, and thereupon then and there this deed aforesaid is duly admitted to record.

Teste: L. D. WARNER, *Clerk.*

A Copy—Teste: J. B. RAINS, *Clerk.*

317 PLAINTIFF'S EXHIBIT No. 39. Filed with Depositions and Returned with Special Master's Report.

This deed, made this 26th day of January, 1884, between A. N. Wellford of the first part and B. Randolph Wellford and Armistead L. Wellford of the second part; whereas the said A. N. Wellford as executor of Robert W. Carter, deceased, hath by purchase become *siezed* and possessed of certain real estate in the county of Richmond called Pittsville; and whereas by agreement between the devisees and legatees of said Robert W. Carter there has been allotted upon distribution of the estate of the said Robert W. Carter unto the said B. Randolph Wellford and Armistead L. Wellford that tract of land known as Pittsville and above mentioned. Now this deed witnesseth that in consideration of the premises, and in the further consideration of the sum of one dollar in hand paid to the said A. N. Wellford by the parties of the second part, the receipt whereof is hereby acknowledged, the said A. N. Wellford doth grant and convey, and by these presents hath granted and conveyed, with special warranty, unto the said B. Randolph Wellford and Armistead L. Wellford jointly that tract or parcel of land called Pitt-sville, situated in Marshall Magisterial District, in the county of Richmond, and bounded by the Rappahannock River, and the farms called Stanly Hall, Level Green, Shelley, and said to contain 183 acres more or less, the same being the land inherited by the children of the late W. M. M. Crabb from their Mother, Ann T. Crabb, who was Ann T. Peck, to have and to hold unto the said B. Randolph Wellford and Armistead L. Wellford and their heirs forever.

Witness the following signature and seal the day and year first above written.

A. N. WELLFORD. [SEAL.]

STATE OF VIRGINIA, *County of Richmond, ss:*

I, W. A. Jones, a Notary Public in and for the county and State aforesaid, do hereby certify that A. N. Wellford, whose name is signed to the foregoing deed, bearing date the 26th day of January, 1884, personally appeared before me in my county aforesaid and acknowledged the same to be his act and deed.

Given under my hand this 26th day of January, 1884.

W. A. JONES,
Notary Public.

318 Clerk's Office, County Court of Richmond County, January 31st, 1884.

This deed, bearing date January 26th, 1884, and executed by A. N. Wellford, was this day presented in the office aforesaid and, together with the certificate thereto annexed, is admitted to record.

Teste: L. D. WARNER, *Clerk.*

A Copy—Teste: J. B. RAINS, *Clerk.*

PLAINTIFF'S EXHIBIT No. 40. Filed with Depositions and Returned with Special Master's Report.

This deed made this the 10th day of December, 1896, between B. Rand Wellford and Jeanie McDonald Wellford, his wife, and Armistead L. Wellford and Imogen Scott Wellford, his wife, of the city of Richmond, Virginia, parties of the first part, and H. T. Douglas, Jr., of the County of Richmond, Virginia, party of the second part, Witnesseth: That for and in consideration of the sum of one hundred dollars ($100.00) in hand paid to the parties of the first part by the party of the second part, the receipt of which is hereby acknowledged the said parties of the first part, do hereby bargain, sell, grant and convey, and by these presents have bargained, sold, granted, conveyed with general warranty unto the said party of the second part, all that certain piece or parcel of land lying and being in Marshall District, Richmond County, Virginia, the same being a part of the farm called Pittsville, and described as follows, to-wit: Beginning at a point in centre of first *bend* of the shore end of the new wharf to be built, thence eastwardly along the low water line to a point *distance* from point of beginning in a direct line one hundred (100) feet, thence at right angle to said direct line in a northerly direction two hundred and fifty feet (250 feet), thence at right angle in a westwardly direction three hundred and forty-nine fee- (349), thence at right angle in a southerly direction two hundred and fifty (250) feet, more or less, to the low water line of the Rappahannock river, thence along said low water line in an easterly direction two hundred and fifty (250) feet, more or less, to the point of beginning, containing two (2) acres, together with the appurtenances thereto belonging, including all piling and other lumber and material formerly a part of the present wharf located and abutting on the property herein conveyed not removed from and remaining on the said land at the date of this deed. To have and to
319 hold the said land and its appurtenances unto the said H. T. Douglas, his heirs and assigns forever.

It is mutually covenanted and agreed between the parties hereto, as is evidenced by the signing and sealing of this deed by the parties of the first and second parts, that the property herein conveyed is to — used for the purpose of a wharf site, and for the erection thereon of storehouses and other buildings necessary to a wharf or canning establishment, and in no event is it to be sold for residences or pur-

poses other than the above; and that no whiskey or other intoxicating liquors shall be sold on the said property by the grantee or any one holding the property under him. The said parties of the first part covenant that they have the right to convey the said land to the grantee that they have done no act to encumber the said land, that the grantee shall have quiet possession of the said land free from all encumbrances and, that said parties of the first part will execute such further assurances of the said land as may be requisite.

Witness the following signatures and seals.

B. RAND WELLFORD. [SEAL.]
JEANIE McD. WELLFORD. [SEAL.]
A. L. WELLFORD. [SEAL.]
IMOGEN SCOTT WELLFORD. [SEAL.]

STATE OF VIRGINIA,
City of Richmond, To-wit:

I, Julian Bryant, a Notary Public for the City of Richmond in the State of Virginia, certify that B. Rand Wellford and Jeanie McDonald Wellford, his wife, Armistead L. Wellford and Imogen Scott Wellford, his wife, whose names are signed to the above deed have personally appeared before me in my city aforesaid and acknowledged the same.

Given under my hand this 12th day of Dec*t*., 1896.

JULIAN BRYANT, *N. P.*

Clerk's Office of the County Court of Richmond County, December 15th, 1896*th*.

The foregoing deed dated December 10, 1896, was this day presented in the office aforesaid and together with the certificate annexed admitted to record.

Teste: L. D. WARNER, *Clerk.*

A Copy—Teste: J. B. RAINS, *Clerk.*

320 PLAINTIFF'S EXHIBIT No. 41. Filed with Depositions and Returned with Special Master's Report.

This Deed, Made and entered into this second day of November, in the year one thousand nine hundred and one, between Henry T. Douglas, Jr., and Ella T. Douglas, his wife, parties of the first part, and The Weems Steamboat Company, of Baltimore City; (a corporation) party of the second part.

Witnesseth, That for and in consideration of the sum of One thousand four hundred dollars ($1,400) to them in hand paid at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, the said Henry T. Douglas, Jr. and Ella T. Douglas, his wife, parties of the first part, as aforesaid, do hereby grant, bargain, sell and convey unto the said Weems Steamboat Company, party of the second part as aforesaid, all that certain lot

or parcel of land situated and lying on the Rappahannock River, in Marshall District, Richmond County, Virginia, originally a part of the Pittsville tract, and bounded and described as follows: Beginning at a point in the centre of the first *bench* of the shore end of the wharf, adjacent to the land herein conveyed, known as Wellford's wharf, thence eastwar-ly along the low water line of the Rappahannock river to a point distant from the point of beginning in a direct fine one hundred feet, thence at right angles to said direct line in a northerly direction two hundred and fifty feet, thence at right angles in a westerly direction three hundred and forty-nine feet, thence at right angle in a southerly direction two hundred and fifty feet more — or less to the low water mark of the Rappahannock River thence along said low water line in an easterly direction two hundred and fifty feet more or less to the point of beginning, containing two acres. The said Weems Steamboat Company, party of the second part, to have and to hold the said tract of land, together with the steamboat wharf thereto adjoining and extending into the Rappahannock River, known as "Wellford's Wharf," which said wharf is hereby conveyed as a part of the said lot or parcel of land, and also together with all rights, privileges and appurtenances to the said lot of land or the said wharf appertaining and belonging to it, its successors and assigns forever, and the said parties of the first part hereby warrant generally the title to the said land and the wharf aforesaid hereinbefore mentioned and conveyed by this deed.

In testimony whereof, Witness the following signatures and seals this day and year first above written.

HENRY T. DOUGLAS, JR. [SEAL.]
ELLA T. DOUGLAS. [SEAL.]

Test: HOWARD D. ADAMS.

321 STATE OF MARYLAND.
Baltimore City, ss:

I hereby certify that on the sixth day of November, 1901, before me a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared, Henry T. Douglas and Ella T. Douglas, his wife, and each acknowledging the foregoing deed to be their respective act, as witness my hand and notarial seal.

[SEAL.] HOWARD D. ADAMS,
Notary Public.

Clerk's Office of the County Court of Richmond County, Virginia, November 7, 1901.

The foregoing Deed bearing date second day of November, 1901, was this day received in the office aforesaid and together with certificate annexed admitted to record.

Teste: J. B. RAINS, *Clerk.*

A Copy—Teste: J. B. RAINS, *Clerk.*

17—181

PLAINTIFF'S EXHIBIT No. 42. Filed with Depositions and Returned with Special Master's Report.

Wellford's Wharf Property.

Owned in 1865 by Anne T. Crabb who died leaving five children as heirs, viz: T. C. Crabb, Sallie P. Crabb, Mary Belfield, Catherine Yeatman and Willie Mitchell.

Deeds.—

1. M'ch 5, 1873, T. C. Crabbe's assignee in bankruptcy to A. N. Wellford, conveying with special warranty 1/5 undivided interest in farm known as "Pittsville" ("Pittsville" is the farm facing Wellford's wharf and on which the wharf is located.) (See deed book 31, p. 403.)

2. Sept. 7, 1878, Sallie P. Crabbe to A. N. Wellford, conveying with general warranty 1/5 undivided interest in "Pittsville." (See deed book 32, p. 368.)

3. May 24, 1879, R. E. Belfield and Mary, his wife, to A. N. Wellford, conveying with general warranty 1/5 undivided interest in "Pittsville." (See deed book 32, p. 416.)

322 4. Dec. 1, 1879, Milton H. Yeatman and Catherine, his wife, to A. N. Wellford conveying with general warranty 1/5 undivided interest in Pittsville. (See deed book 32, p. 473.)

5. Nov. 18, 1882, W. A. Jones, Spec'l Comm'r to A. N. Wellford, conveying with special warranty, the 1/5 undivided interest of the heirs of Willie Mitchell, deceased. (See deed book 32, p. 286.)

N. B.—In each of the five deeds above the interest conveyed was a reversion in fee simple after the death of Wm. M. M. Crabbe who had an estate of courtesy in the land conveyed. The last named person is now dead as is also the husband of Willie Mitchell, deceased.

Jan. 26, 1884, A. N. Wellford to B. Rand Wellford and Armistead L. Wellford, conveying with special warranty tract known as "Pittsville." (See deed book 33, p. 411.)

Dec. 10, 1896, B. Randolph Wellford and wife, and Armistead L. Wellford, and wife, to H. T. Douglas conveying with general warranty, the part of "Pittsville" adjacent to the wharf and on which the latter is built, containing two acres. (See deed book 36, p. 470.)

Nov. 2, 1901, H. T. Douglas and wife to the Weems Steamboat Co., conveying, with general warranty the land and wharf in question. (See deed book 38, p. 267.)

O. L. SHACKLEFORD, *Att'y.*

VIRGINIA:

At a special term of the Circuit Court held in Essex county at the court house thereof on December 2nd, 1893.

323 PLAINTIFF'S EXHIBIT No. 43. Filed with Depositions and Returned with Special Master's Report.

NEALE'S ADMINISTRATOR
against
NEALE & Others.

This cause came on this day to be again heard upon the papers formerly read, the report of Commissioner H. W. Daingerfield and the deposition therewith filed, to which there are no exceptions and the same is hereby confirmed, and was argued by counsel.

On consideration whereof, the court being of opinion that the interests of the infant defendants will be promoted by granting the prayer of the petition and allowing W. T. Neale, guardian, to borrow a sufficient amount of money from the Weems Steamboat Company of Baltimore, Maryland, to rebuild the wharf at Bowler's in Essex county, and give a lien on the rents, profits and revenues arising therefrom to reimburse the said Weems Steamboat Company, and that the rights of no person will be violated thereby doth adjudge, order and decree that the said W. T. Neale, guardian, be, and he is hereby authorized to borrow from the Weems Steamboat Company of Baltimore, Maryland, the amount of money necessary to rebuild the wharf at Bowler's, Essex County, Virginia, in the proceedings mentioned (not to exceed $2,200) and to give the said Weems Steamboat Company a lien on the rents, profits and revenues arising from said wharf to reimburse the said Weems Steamboat Company the amount so borrowed. But this decree is in no way to deprive Mrs. Lizzie L. Neale, the widow of R. M. Neale, deceased, of the annuity in right of dower heretofore granted her by a decree heretofore rendered in this cause, and the same shall be paid annually out of the revenues, rents and profits arising from said wharf upon which she has the first lien, and the said W. T. Neale, guardian, as aforesaid, shall report to court his proceedings under this decree.

A Copy—Teste:

H. SOUTHWORTH, *Clerk.*

324 PLAINTIFF'S EXHIBIT No. 44. Filed with Depositions and Returned with Special Master's Report.

This deed made this 26th day of February, 1887, between B. L. Farinholt and Lelia M., his wife, of the City of Baltimore, State of Maryland, and W. H. Farinholt and E. B., his wife, of Warrenton, State of North Carolina, of the first part, and Henry Williams, of the said City of Baltimore, State of Maryland, of the second part. Witnesseth: that the said B. L. Farinholt and Lelia M., his wife, and the said W. H. Farinholt and E. B., his wife, in consideration of the sum of seven hundred ($725.00) and twenty-five dollars in hand paid by the said Henry Williams, the receipt whereof is hereby acknowledged, do grant unto the said Henry Williams, the wharf and pier head at Bowler's, Essex County, Virginia, in the Rappahannock

river, they, the said grantors, being joint and equal owners of the same, together with all the rights, privileges, franchises and appurtenances thereto acquired and used in the building and erection and use of the same, the said grantors hereby intending to convey by this deed to the said grantee and divest themselves of all right, title and interest to and in the said property of whatever character and description with general warranty. Given under our hands and seals the day and year above written.

B. L. FARINHOLT. [SEAL.]
LELIA M. FARINHOLT. [SEAL.]
WM. H. FARINHOLT. [SEAL.]
E. B. FARINHOLT. [SEAL.]

NORTH CAROLINA, *Warren County:*

Be it remembered that on the 26th day of February, 1887, before me, William A. White, Clerk of the Superior Court and *ex officio* Notary Public in and for said county personally appeared Wm. H. Farinholt and E. B. Farinholt, his wife, and acknowledged the due execution by them of the foregoing and within deed. And thereupon the said E. B. Farinholt being by me privately examined separately and apart from her said husband touching her free consent in the execution of said deed, she in such her examination declared that she had executed the same freely of her own will and accord
325 and without any force, fear or compulsion of her said husband or any other person and did still voluntarily assent thereto.

Witness my hand and seal of office in Warrenton the day & year above written.

[Seal of Court.]

WILLIAM A. WHITE,
Clerk Superior Court & ex Officio Notary Public.

STATE OF MARYLAND,
City of Baltimore, To-wit:

I, G. Evett Reardon, a commissioner, appointed by the Governor of the State of Virginia, for the said State of Maryland, certify that B. L. Farinholt and Lelia M. Farinholt, his wife, whose names are signed to the writing hereto annexed, bearing date on the 26th day of Feby., 1887, have acknowledged the same before me in my State aforesaid. I do also certify that Lelia M. Farinholt, the wife of B. L. Farinholt, whose names are signed to the writings hereto annexed bearing date on the 26th day of Feby., 1887, personally appeared before me in the State aforesaid and being examined by me privily and apart from her husband and having the writing aforesaid fully explained to her, she the said Lelia M. Farinholt, acknowledged the said writing to be her act and declared that she had willingly executed the same and does not wish to retract it. Given under my hand this 5th day of March, Anno Domini, 1887.

[Commissioner's Seal.]

G. EVETT REARDON,
A Commissioner for Virginia in the State of Maryland, residing at Baltimore City., Lexington St.

Essex County Court Clerk's Office, March 10th, 1887.

This deed was this day produced to me in my said office and with the testimonials accompanying the same from the States of Maryland and North Carolina with the official seals annexed admitted to record.
Teste: JAMES ROY MICON, *Clk.*

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

326 PLAINTIFF'S EXHIBIT No. 45. Filed with Depositions and Returned with Special Master's Report.

VIRGINIA:

In Essex County Court, February 16th, 1874.

On the motion of James H. Hundley, H. Logan Newbill and others whose names are appended to the petition this day filed by them and the said petitioners having given notice of their intention to apply to the court for the privilege of erecting a wharf at or on the county landing at Bowler's on the Rappahannock river by advertising such notice at two or more public places near the landing and also at the front door of the court house of this county on the first day of January term last. It is ordered by the court that the petitioners have the privilege of erecting the said wharf at the place aforesaid.
A Copy—Teste: H. SOUTHWORTH, *Clerk.*

PLAINTIFF'S EXHIBIT No. 46. Filed with Depositions and Returned with Special Master's Report.

This agreement made this twenty-seventh day of December, in the year eighteen hundred and ninety-three between W. T. Neale of King William County, in the State of Virginia, and The Weems Steamboat Company of Baltimore City, in the State of Maryland.

Whereas by an order of the Circuit — held for Essex County, in the State of Virginia, on the 2nd day of December, in the year 1893, in a case wherein Neale's administrators are complainants and Neale and others are defendants the said W. T. Neale, guardian, was authorized *from* the said Weems Steamboat Company to borrow a sufficient sum of money to rebuild the wharf at Bowler's, in Essex County, and to give a lien on the rents and profits and revenues arising therefrom to reimburse the said steamboat company, and the rights of no person to be violated thereby the said sum so borrowed not to exceed the sum of two thousand two hundred dollars provided that the annuity heretofore granted by the said court out of the rents and profits from said wharf to Mrs. Lizzie L. Neale, widow of R. M. Neale shall be paid to her as a first lien on said rents and profits from said wharf, and whereas the said Weems Steamboat Company has agreed to advance a sum of money not exceeding two thousand two hundred dollars for the purpose of rebuilding said wharf on the terms

above mentioned. Now therefore in consideration of the premises and of the agreement aforesaid of said steamboat company to advance a sum of money to rebuild said wharf the said W. T. Neale, guardian, does hereby agree to give to said Weems Steamboat
327 Company and does give a lien on said Bowler's wharf and on all the rents, profits and revenues from said wharf to secure and to repay to said Weems Steamboat Company the money to be by it under the provisions of said order of the court advanced to rebuild said wharf, provided that the annuity so as aforesaid mentioned for the widow Mrs. Lizzie L. Neale shall be paid as aforesaid directed to be paid to her, before any of the amount shall be applied to the re-payment of the Weems Steamboat Company of the money so advanced by it and the said Weems Steamboat Company is hereby authorized and empowered after paying said annuity to said Mrs. Lizzie L. Neale and after paying whatever sums of money may be required in keeping in repair said wharf and in paying for the services of a wharf agent at said wharf to apply to its own use all other rents, profits and income that may arise from said wharf until all advances with interest thereon shall be repaid to it.

Witness my hand and seal & the *and the* signature of the president of said Steamboat Company together with the corporate seal of said company on the day and year aforesaid.

WM. T. NEALE, *Guardian.* [SEAL.]
HENRY WILLIAMS,
President Weems Steamboat Company of Baltimore City.

[Seal of the Weems Steamboat Company of Baltimore City.]

Witness:
JNO. DOVE.

PLAINTIFF'S EXHIBIT No. 47. Filed with Depositions and Returned with Special Master's Report.

This agreement made this 19th day of December, 1889, between John S. H. Whealton, of the one part, and John Whealton, of the other part, both of the Co. of Lancaster, & State of Virginia, Witnesseth: That we, the said parties, being the equal and joint owners of the farm known as Morattico and being desirous of dividing the same between ourselves do hereby make the following agreement as to how the dividing lines shall run: The line to divide Morattico proper shall commence at a stone boundary on Ivy's creek and run straight in about a southerly direction to a stone boundary in Mud creek. All the land to the westward of this line containing about one hundred and eighty acres is assigned to John S. H. Whealton
328 together with a half acre on Mud creek to the eastward of and adjoining this line. It is however agreed that in the event of a sale of the part assigned to John S. H. Whealton, or in the event of the latter's death, then the said half acre shall revert to the other part. All the land to the eastward of the above mentioned line and extending up the public road to an oak tree about fifty yards below

the new Chapel, thence in about a southerly direction, straight to a gum tree on Mud Creek estimated to be about one hundred and ninety acres, is assigned to John H. Whealton. In consideration of the buildings being all located upon the last named parcel, one hundred and ninety acres is assigned to this part as against two hundred and ninety acres (as will further appear) assigned to the other part upon which there are no buildings of value. All the land lying between the last mentioned line and the land of F. W. Lewis estimated to be about sixty acres together with a piece of timbered land lying on the public road between Mud creek gate and the Lodge farm estimated to be about fifty acres is assigned to John S. H. Whealton. It is also agreed that John H. Whealton shall pay to John S. H. Whealton to further equalize the partition the sum of one hundred dollars. It is further agreed that John S. H. Whealton shall have the right of way to & from the public road at Morattico gate, said way to pass as near Ivy's creek and the line between Curlett's & Morattico as the nature of the ground will permit. Witness our signatures & seals this the 24th day of January, 1890.

JOHN S. H. WHEALTON. [SEAL.]
JOHN H. WHEALTON. [SEAL.]

Witness:
W. H. STERLING.

STATE OF VIRGINIA,
County of Lancaster, To-wit:

I, R. F. Mitchell, a justice for the county aforesaid, in the State of Virginia, do certify that John S. H. Whealton and John H. Whealton, whose names are signed to the writing hereto annexed bearing date on the 24th day of January, 1890, have acknowledged the same before me in my county aforesaid.

Given under my hand this the 24th day of January, 1890.

R. F. MITCHELL, *J. P.*

329 VIRGINIA:

In the Office of the Clerk of the County Court of Lancaster County, the 27th day of January, 1890.

This deed was presented and with the certificate annexed, admitted to record.

Teste: SAM P. GRESHAM, *C. C.*

STATE OF VIRGINIA, *County of Lancaster, To-wit:*

I, Wm. Chilton, Clerk of the County Court for the County aforesaid, in the State of Virginia, do certify that the foregoing is a true copy from the records of said court. Given under my hand this 28th day of May, 1903.

WM. CHILTON, *Clerk.*

PLAINTIFF'S EXHIBIT No. 48. Filed with Depositions and Returned with Special Master's Report.

This deed made and entered into this 28th day of July, in the year 1900, between J. H. Whealton and Emma A. Whealton, his wife, parties of the first part, and Whealton Packing Co., a company incorporated under the laws of the State of Virginia, of the second part, all of the County of Lancaster and State of Virginia. Witnesseth: That for and in consideration of the sum of three thousand dollars ($3,000.00) in hand paid to the parties of the first part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged. The said J. H. Whealton and Emma A. Whealton, his wife, parties of the first part have bargained and sold, and by these presents do bargain, sell, convey and release unto the said Whealton Packing Company the following property, to-wit: All of the interest of the said parties of the first part in the steamboat wharf at Whealton's, in the county of Lancaster, and State of Virginia, together with the franchise and all the appurtenances to the same belonging or in any wise appertaining. To have and to hold the above described property to the said Whealton Packing Company and to its successors or assigns with general warranty. Witness the following signatures and seals this day and year above written.

JNO. H. WHEALTON. [SEAL.]
EMMA A. WHEALTON. [SEAL.]

330 LANCASTER COUNTY, *To-wit:*

I, F. G. Lankford, a justice for the county aforesaid, do certify that Jno. H. Whealton and Emma A. Whealton, whose names are signed to the foregoing writing, bearing date on the 28th day of July, 1900, personally appeared before me and acknowledged the same in my county aforesaid. Given under my hand this 13th day of May, 1901.

F. G. LANKFORD, *J. P.*

VIRGINIA:

In the Clerk's Office of the County Court of Lancaster County, the 20th Day of May, 1901.

This deed with the required stamps affixed and canceled was presented and with the certificate annexed admitted to record at 12 o'clock M.

Teste: WM. CHILTON, *C. C.*

STATE OF VIRGINIA, *County of Lancaster, To-wit:*

I, Wm. Chilton, Clerk of the County Court for the County aforesaid, in the State of Virginia, do certify that the foregoing is a true

copy from the records of said court. Given under my hand this 28th day of May, 1903.

WM. CHILTON, *Clerk.*

PLAINTIFF'S EXHIBIT No. 49. Filed with Depositions and Returned with Special Master's Report.

Know all men that I, J. S. H. Whealton for and in consideration of twenty-five hundred dollars to me in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged doth grant, sell, alien, release and confirm unto John H. Whealton of the County of Lancaster, and State of Virginia, his heirs and assigns, forever all that tract or parcel of land, of which I, the said J. S. H. Whealton, *are* seized and possessed containing by estimation two hundred and ninety acres be the same however so much more or less, the same being one half of the farm known as Moratico, lying in Moratico Neck in White Chapel District, in the said county, which said Moratico farm was purchased of James P. Saunders, trustee, in the suit of Hagnor and wife *vs.* James P. Saunders, trustee, pending in the Circuit Court of said County
331 *Court of said County* by the said J. S. H. Whealton and John H. Whealton, by deed recorded in the clerk's office of said county in deed book — folio — reference to which said deed is hereby made for a more particular description of said premises, and which Moratico farm was afterwards divided between the said J. S. H. Whealton and the said John H. Whealton, as will more fully and at large appear by a deed of partition between said parties recorded in the clerk's office of the said county in deed book — folio — to which deed dated 27th day of January, 1890, reference is hereby made for a particular description of the premises herein conveyed, the same being that part of the said Moratico tract of land belonging to the said J. S. H. Whealton and containing as aforesaid two hundred and ninety acres of land be the same however so much more or ever so much less, and is divided into three separate tracts together with all the appurtenances to the said land belonging or in any wise appertaining. To have and to hold the said tract or parcel of land with its appurtenances aforesaid with general warranty unto the said John H. Whealton, his heirs and assigns forever. Witness the hand and seal of the said J. S. H. Whealton this 10th day of August, 1891.

J. S. H. WHEALTON. [SEAL.]

Test:

T. F. MILLER.

LANCASTER COUNTY, *Virginia, To-wit:*

I, Thomas F. Miller, a justice of peace of the County of Lancaster and State aforesaid, do certify that J. S. H. Whealton, whose name is signed to the above writing bearing date the 10th day of August, 1891, has acknowledged the same before me in my county aforesaid. Given under my hand this the 24th day of August.

THOMAS F. MILLER, *J. P.*

VIRGINIA:

In the Clerk's Office of the County Court of Lancaster County, the 22nd Day of September, 1891.

This deed was presented and with the certificate annexed admitted to record.

Teste: SAM P. GRESHAM, *C. C.*

332 STATE OF VIRGINIA, *County of Lancaster, To-wit:*

I, Wm. Chilton, Clerk of the County Court for the County aforesaid, in the State of Virginia, do certify that the foregoing is a true copy from the records of said court. Given under my hand this 28th day of May, 1903.

WM. CLINTON, *Clerk.*

PLAINTIFF'S EXHIBIT No. 50. Filed with Depositions and Returned with Special Master's Report.

This indenture made this 16th day of December, 1889, between James P. Saunders, of the first part, and John S. H. Whealton and John H. Whealton, of the second part, Witnesseth, that whereas under a decree of the Circuit Court of Lancaster County, Virginia, on the chancery side thereof in the suit of D. R. Hagner *vs.* James P. Saunders, trustee, under a deed of trust executed by L. D. Mitchell as well as other parties to said suit, the said James P. Saunders was appointed special commissioner to sell the land in the said bill & proceedings mentioned either at private or public sale by the whole or in parcels and whereas the said James P. Saunders, — the hereafter following lands to the said John S. H. Whealton and John H. Whealton at private sale for the sum of four thousand dollars & whereas the said James P. Saunders, commissioner as aforesaid, reported said sale to the Circuit Court at its last term on the 4th day of December, 1889, and the said court confirmed said sale and allowed the said purchasers to anticipate the payments on the deferred bonds and whereas the said John S. H. Whealton and John H. Whealton have this day paid all the purchase money to the said James P. Saunders, commissioners as aforesaid, in consideration of the premises and the payment of the sum of four thousand dollars to him in hand paid at and before the ensealing and delivery hereof doth give, grant bargain, sell and confirm with special warranty unto the said John S. H. Whealton and John H. Whealton the following tract or parcel of land lying and being in White Chapel district in the County of Lancaster & in the State of Virginia, commencing at a stob on an old ditch adjoining Dr. F. W. Lewis's land leading south to the head of a cove thence down said cove to Raccoon Cove, thence up Raccoon to a stob at its head, thence along the marsh to a stob at the fence leading to Carpenter's landing, thence with said fence to Carpenter's landing, thence following Mud creek to Mulberry Point on the

Rappahannock river shore, thence with said shore to Mor-
333 ratico Point, thence up Morratico creek to Ivy's creek North east course to land adjoining the line of Norwood tract to Morattico gate thence along the public road to the point of beginning; together with the following tract of timber land bounded as follows, to-wit Commencing at Mud creek gate, thence east along the old road dividing this tract from the land of the late Dr. W. H. Kirk to the Lodge fence on an old ditch thence north to the main road leading into the neck, thence following said road west course to the point of the beginning containing 480 acres, be the same however ever so much more or so much less & being the whole of the tract *of* known as Morattico proper (which was estimated to be about five hundred and one acres) less three tracts or parcels of land heretofore sold by the said Commissioner Saunders as appears from his report in the said suit, together with the appurtenances to the said land belonging or in any wise appertaining. Witness the following signature and seal this 16th day of December, 1889.

JAMES P. SAUNDERS. [SEAL.]

VIRGINIA, *Lancaster County, To-wit:*

I, Sam P. Gresham, Clerk of the County Court of Lancaster County, do certify that James P. Saunders, whose name is signed to the foregoing deed bearing date on the 16th day of December, 1889, has acknowledged the same before me in the office of the clerk of the court aforesaid. Whereupon the said deed is admitted to record. Given under my hand this 16th day of December, 1889.

SAM P. GRESHAM, *Clerk.*

STATE OF VIRGINIA,
County of Lancaster, To-wit:

I, Wm. Chilton, Clerk of the County Court for the County aforesaid, in the State of Virginia, do certify that the foregoing is a true copy from the records of said court. Given under my hand this 28th day of May, 1903.

WM. CHILTON, *Clerk.*

334 PLAINTIFF'S EXHIBIT No. 51. Filed with Depositions and Returned with Special Master's Report.

Abstract of title to Whealton's Whf. property, since Sept. 22, 1891, as appears from the records of the Clerk's Office of the County Court of Lancaster County.

Deed of bargain & sale from J. S. H. Whealton to J. H. Whealton conveying land upon which Whealton's Whf. is built—Recorded Sept. 22, 1891, in Deed Book #47, pg. 444.

A deed of trust was given upon this property, but has since been released.

Deed of Bar. & Sale from J. H. Whealton & Wf. to Whealton Packing Co. (Incorporated), conveying Steamboat Whf. at Whealton, Va., with franchises & all appurtenances, &c.

Recorded May 20, 1901, in Deed Book #51, at page 245.
A true abstract made from the records this 15th day of July, 1903.
Teste:

WM. CHILTON,
Clerk of Co. Court of Lancaster Co., Va.

PLAINTIFF'S EXHIBIT No. 52. Filed with Depositions and Returned with Special Master's Report.

This deed made this 25th day of April, in the year of our Lord eighteen hundred and sixty six between Christopher Grammar, trustee for Elizabeth Thornton, of the one part, Champe B. Thornton and Elizabeth Thornton, his wife, of the second part, and Jacob Tome, Robert Alexander Taylor, Joseph J. Taylor & John S. Gittings, of the city of Baltimore, and State of Maryland, of the third part. Witnesseth, that the said parties hereto of the first and second part, in consideration of the sum of fifteen hundred dollars to them in hand paid by the parties hereto of the third part, the receipt whereof is by the execution of these presents acknowledged, have granted, bargained and sold and conveyed, and by these presents do grant, bargain and sell and convey unto the said parties hereto of the third part, their heirs and assigns in fee simple (the said Christopher Grammar, as trustee, with special warranty and the said Thornton and wife with general warranty), a certain lot of land situated in the town of Port Royal, in the County of Caroline, in the State of Virginia, thus described, to-wit, beginning for the
335 same at the centre of a large planted granite stone marked B, in Charles E. Gibbs' line (corner to C. B. Thornton and J. J. Taylor and Co. three poles, horizontal measure from high water mark of the Rappahannock river, thence South 37½° East seventeen poles, and seventeen twenty-fifths of a pole to the side line of the street; thence with said side line North 43° East to the channel of the river, thence up and with said channel to a point opposite the point of beginning; thence South 43° west to the point of beginning. Together with all the improvements, rights, privileges and appurtenances to said lot of land belonging or in any wise appertaining, excepting the right of way to and from the public ferry held by said Christopher Grammar, as trustee for said Elizabeth Thornton, which now lands upon and uses for ferry purposes a portion of the wharf upon the lot of land hereby conveyed to the parties of the second part; the right to use said wharf and landing for the ferry purposes is hereby reserved so long as said ferry may be held in trust for the said Elizabeth Thornton, and it is hereby understood and agreed that should any portion of said wharf be upon or in the public road or street, or upon the land of any private individual the said Elizabeth Thornton hereby covenants and agrees, and binds her separate property to indemnify the said parties of the second part for any loss they may hereafter sustain by eviction or by the use without remuneration of any portion of said wharf by other persons; in the event that any portion of the said wharf is upon or in the public road or street, or upon the land of any private individual. A plat of said

land hereby conveyed is herewith attached, and is to be taken as a part of this deed. To have and to hold to the said parties of the third part their heirs and assigns the said land in the following proportions, to-wit, to said Jacob Tome, his heirs and assigns one hundred and seventeen, four hundre-ths thereof, to said Robert Alexr Taylor one hundred and seventeen four hundre-ths thereof, to him his heirs and assigns. To said Joseph James Taylor his heirs and assigns one *one* hundred and sixteen four hundre-ths thereof, and to said John S. Gittings his heirs and assigns fifty-four hundre-ths thereof.

Witness their hands and seals on the day and year first above written.

*CHRISTR GRAMMAR. [SEAL.]
CHAMPE B. THORNTON. [SEAL.]
ELIZABETH THORNTON. [SEAL.]

Teste:
J. W. BARNACLE.*

(See plot on page 290.)

336 STATE OF VIRGINIA,
Caroline Co., To-wit:

This day Campe B. Thornton, whose name is signed to the within writing bearing date on the 25th day of April, 1865, personally appeared before me in my county aforesaid and acknowledged the same to be his act and deed.

Given under my hand this 25th day of April, 1865.

RICHARD H. GARRETT, *J. P.*

STATE OF VIRGINIA,
Caroline Co., To-wit:

We, Joseph W. Kay and Richard H. Garrett, justices of the peace for the County of Caroline, and State of Virginia, do hereby certify that Elizabeth Thornton, wife of Champe B. Thornton, whose names are signed to the within writing, bearing date on the 25th day of April, 1865, personally appeared before us in our county, aforesaid, and having been examined by us privily and apart from her husband and having the said writing fully explained to her she, the said Elizabeth Thornton, acknowledged the same to be her act and deed and that she had willingly signed the same and did not wish to retract it.

Given under our hands this 25th day of April, 1865.

JOS. W. KAY, *J. P.*
RICHARD H. GARRETT, *J. P.*

DISTRICT OF COLUMBIA, *To-wit:*

I, Return J. Meigs, Clerke of the Supreme Court of the District of Columbia, hereby certify that J. W. Barnacle, whose genuine signature is subscribed to the foregoing certificate of acknowledgement

was at the time of signing and attesting the same, a justice of the peace for said district, duly commissioned and qualified, authorized to take acknowledgements and administer oaths; and that his attestation thereto is according to law.

Witness my hand and the seal of said court this 1st day of May, 1866.

[SEAL.] R. J. MEIGS, *Clerk*.

337 (1)

DISTRICT OF COLUMBIA,
County of Washington, To-wit:

This day came Christopher Grammar, whose name is signed to the within deed, bearing date the 25th day of April, A. D., 1866, personally appeared before me in my county aforesaid and acknowledge the same to be his act and deed.

Given under my hand and seal this 1st day of May, A. D., 1866.

J. W. BARNACLE, *J. P.* [SEAL.]

Clerk's Office of Caroline County Court, January 28th, 1866.

The foregoing deed and certificates of its acknowledgement by the grantors & the plat thereto were this day received in my office & having U. S. Revenue Stamps upon them of the amount of one & half dollars. It is admitted to record.

Teste:

ROBT HUDGIN, *Clk.*

Truly recorded.
Teste:

ROBT HUDGIN, *Clk.*

A copy from the Records of Caroline County Court, Deed Book Number 52, pages 286, 287 and 288.

Teste:

E. R. COGHILL, *Clerk.*

May 25th, 1903.
[Stamp.]

C. B. Thornton of the town of Port Royal Caroline County, Va., and is situated in said town and bounded as follows, Beginning at the point A. (the centre of a large planted granite stone marked B. in Chas. E. Gibbs' line, cor. to C. B. Thornton & J. J. Taylor & Co. 3 poles, horizontal measure, from high water mark of Rapk. river, thence S. 37½° E. 17 25 poles to the side line of the street, thence with said line N. 43° E. to the channel of the river, thence up sd. channel to a point opposite the beginning, thence South 43° W. to the begin-ing.

The area of A, B, C, D, 2 R 17 P. Surveyed and calculated in Nov'r, 1865, by Jos. W. Kay.
Annexed to deed Grammar, &c., to Tome, &c., recorded page 286.
Teste:

ROBT HUDGIN, *Clk.*

Truly recorded.
Teste:

ROBT HUDGIN, *Clk.*

338 A copy from the Records of Caroline County Court, Deed Book Number 52, page 290.
[SEAL.] E. R. COGHILL, *Clerk.*

May 25th, 1903.

PLAINTIFF'S EXHIBIT No. 53. Filed with Depositions and Returned with Special Master's Report.

This deed made this tenth day of February, in the year of our Lord eighteen hundred and seventy-five between Jacob Tome of Cecil County, and State of Maryland, Robert A. Taylor and Ann E., his wife, Joseph J. Taylor and Sidney A., his wife, of the City of Baltimore, and State of Maryland, and John S. Gittings and Charlotte C. Gittings, his wife, of Baltimore County, and State of Maryland, of the first part; and Georgianna Williams, wife of Henry Williams, and Matilda S. Forbes, wife of Sidney H. Forbes, of Baltimore City, and State aforesaid, of the second part, Witnesseth, that in consideration of the sum of five dollars the said parties of the first part have granted, bargained and sold and by these presents do grant, bargain and sell to said parties hereto of the second part, their heirs and assigns, the following described lot of ground in the town *in the town* of Port Royal in the County of Caroline, in the State of Virginia, to-wit: Beginning for the same at the centre of a large planted granite stone marked B, in Charles E. Gibbs line (corner to C. B. Thornton and J. J. Taylor & Co.) three poles horizontal measure from high water mark of the Rappahannock river; thence South 37° East seventeen poles *poles* and seventeen twenty-fifths of a pole to the side line of the street; thence with said side line North 43° East to the channel of the river, thence up and with said channel to a point opposite the point of beginning—Together with all the improvements, rights, privileges and appurtenances to the said lot of land belonging or in any wise appertaining—Excepting that right of way reserved thereon—vide deed Gram-Mar, trustee, to Tom*e* and others dated the twenty-fifth day of April, eighteen hundred and sixty-six, recorded land records of Caroline County, Virginia, Liber 52, page 286. To have and to hold the said parcel of land and all the right, title and interest of the said parties of the first part therein and thereto to the said parties of the second part, their heirs and assigns forever, and the said parties grantor do hereby covenant that they will specially warrant the said parcel of land to said parties

hereto of the second part their heirs and assigns, and also
339 that they will execute all such other and further assurances as may be deemed requisite.

Witness our hands and seals.

J. TOME.	[SEAL.]
ROBERT A. TAYLOR.	[S.]
ANN E. TAYLOR.	[S.]
JOE JAS. TAYLOR.	[SEAL.]
SIDNEY A. TAYLOR.	[SEAL.]
JOHN S. GITTINGS.	[SEAL.]
C. C. GITTINGS.	[SEAL.]

Teste:
THOS. MURDOCH.
J. GEO. SPILMAN.

STATE OF MARYLAND,
Baltimore City, To-wit:

I, Thomas Murdoch, a Notary Public in and for the City of Baltimore, in the State of Maryland, do hereby certify that Jacob Tome, Joseph J. Taylor, Robert A. Taylor, and John S. Gittings, whose names are above signed to the above deed, bearing date the fifteenth day of February, A. D. eighteen hundred and seventy-five personally appeared before me in my city aforesaid and acknowledged the said writing to be their actual deed.

Witness my hand and seal Notarial this 31st day of March, in the year A. D. 1875.

[NOTARIAL SEAL.] THOMAS MURDOCH.

STATE OF MARYLAND,
Baltimore City, To-wit:

I, Thomas Murdoch, a Notary Public in and for the City of Baltimore, in the State of Maryland, do hereby certify that Ann E. Taylor, the wife of Robert A. Taylor, Sidney A. Taylor, the wife of Joseph J. Taylor, and Charlotte C. Gittings the wife of John S. Gittings, whose names are signed as above to the aforegoing deed bearing date the fifteenth day of February, A. D., eighteen hundred and seventy-five personally appeared before me in my city
340 aforesaid and being examined by me privily and apart from their husbands, and having the writing aforesaid fully explained to them, they, the said Anne Sidney and Charlotte acknowledged the said writing to be their act, and declared that they willingly executed the same and do not wish to retract it.

Witness my hand and seal Notarial this 31st day of March, in the year A. D. 1875.

[NOTARIAL SEAL.] THOMAS MURDOCH.

Clerk's Office of Caroline County Court, April 23rd, 1875.

The foregoing deed with the notary's certificates of its acknowledgment by the grantors, was this day received in my office. It is admitted to record and is duly recorded.

Teste: THOMAS W. VALENTINE, *D'y Clk.*

A copy from the Records of Caroline County Court, Deed Book Number 56, pages 199, 200 and 201.

[SEAL.] E. R. COGHILL, *Clerk.*

May 25th, 1903.

PLAINTIFF'S EXHIBIT No. 54. Filed with Depositions and Returned with Special Master's Report.

This deed, Made this fourth day of January, in the year eighteen hundred and ninety-two, by us, Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sidney H. Forbes, her husband, all of the city of Baltimore, State of Maryland:

Witnesseth that in consideration of the fulfillment of a contract between us and The Weems Steamboat Company, of Baltimore City, a corporation duly incorporated, and also of one dollar, to us in hand paid, the receipt of which is hereby acknowledged, we, the said Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sidney H. Forbes, her husband, do grant unto the said The Weems Steamboat Company of Baltimore City, its successors and assigns, all of our right title and interest, at law or in equity, jointly or severally, as owners, lessees or otherwise, in and to any and all of the lands and appurtenances, wharf, land appurtenant to and used therewith, easements and privileges hereinafter mentioned or described, which wharf is generally known by the name, or situated at the place hereinafter mentioned, and is
341 situated in the County of Caroline, in the State of Virginia, that is to say Port Royal Wharf.

Together, With all of the lands and rights adjacent to or connected with the above mentioned wharf or landing, which were conveyed to Jacob Tome and others by deed from Christopher Grammer, Trustee, dated 25th April, 1866.

Witness the following signatures and seals:

GEORGEANNA WILLIAMS. [SEAL.]
HENRY WILLIAMS. [SEAL.]
MATILDA S. FORBES. [SEAL.]
SIDNEY H. FORBES. [SEAL.]

STATE OF MARYLAND,
City of Baltimore, To-wit:

I hereby certify that on this Fourth day of January, 1892, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, aforesaid, personally appeared Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sidney H. Forbes, her husband, and acknowledged the foregoing Deed to be the act and Deed of each of them, respectively.

In testimony whereof, I have hereunto set my hand and affixed my Notarial Seal the day and year above written.

[NOTARIAL SEAL.] WM. H. MASSON,
Notary Public.

In Caroline County Clerk's Office, January 5, 1892.

The foregoing Deed, with the annexed certificate, was this day received in the office. It is admitted to record and is truly recorded.
Teste: T. C. VALENTINE, *D'y C. C.*

A copy from the records of Caroline County Court, Deed Book Number 63, pages 288 and 289.
Teste:
[SEAL.] E. R. COGHILL, *Clerk.*

May 25th, 1903.

342 PLAINTIFF'S EXHIBIT No. 55. Filed with Depositions and Returned with Special Master's Report.

Abstract of Title of the Port Royal Wharf for the Weems Steamboat Company.

Deed Book 63, page 288, deed dated January 4th, 1892, from Georgianna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sydney H. Forbes, her husband, to Weems Steamboat Co. of Baltimore City, Md., conveys all their right, title and interest at law or in equity, jointly and severally, as owners, lessees or otherwise, in and to any and all of the lands and appurtenances, wharf, land appurtenant to and used therewith, easements and privileges, situated in the County of Caroline, Virginia; that is to say Port Royal wharf together with all the lands and rights adjacent to or connected with the above mentioned wharf or landing, which were conveyed to Jacob Tome and others by deed from Christopher Grammar, trustee, dated April 25th, 1866.

No. 2.

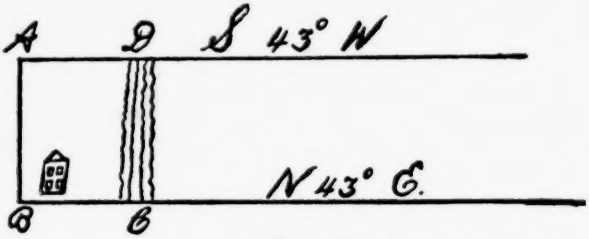
Deed book 56, page 199, deed dated Feb'y 10th, 1875, from Jacob Tome of Cecil County, Md., Robert A. Taylor and Ann E., his wife, Joseph J. Taylor and Sidney A., his wife, of City of Baltimore, Md., and John L. Gittings and Charlotte C. Gittings, his wife—To Georgeanna Williams, wife of Henry Williams and Matilda S. Forbes, wife of Sidney H. Forbes; conveys in consideration of $500 the following described lot of ground in the town of Port Royal in the County of Caroline, State of Virginia, to-wit: Beginning for same at the center of a large planted granite stone marked "B" in Charles E. Gibbs' line (corner to C. B. Thornton and J. J. Taylor & Co.) three poles horizontal measure from high water mark of the Rappahannock river, thence South 37 and one half degrees East seventeen poles and seventeen twenty-fifths of a pole to the side line of the street; thence with said side line North 43 degrees East to the channel of the river, thence up and with said channel to a point opposite the point of beginning—with all rights, appurtenances, etc., belonging thereto, except the right of way reserved in deed from Grammar, trustee, to Tome and others.

343 No. 3.

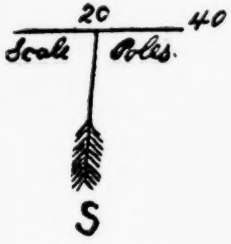
Deed book 52, page 286, deed dated April 25th, 1866, from Christopher Grammar, trustee, for Elizabeth Thornton, of the first part; Champe B. Thornton and Elizabeth Thornton, his wife, of the second part, and Jacob Tome, Robert Alexander Taylor, Joseph J. Taylor and John S. Gittings, of the City of Baltimore, of third part; in consideration of $1,500, parties of the first and second parts convey to said parties of the third part the parcel of land, etc., described ante in No. 2 to Georgeianna Williams and Matilda Forbes, description the same "excepting the right of way to and from the public ferry held by said Christopher Grammar, as trustee for said Elizabeth Thornton, which now lands upon and uses for ferry purposes a portion of the wharf upon the lot of land hereby conveyed to the parties of the second part; the right to use said wharf and landing for the purposes is hereby reserved so long as said ferry may be held in trust for the said Elizabeth Thornton and it is hereby understood and agreed that should any portion of said wharf be upon or in the public road or street, or upon the land of any private individual the said Elizabeth Thornton hereby covenants and agrees, and binds her separate property to indemnify the said parties of the second part for any loss they may hereafter sustain by eviction or by the use without remuneration of any portion of said wharf by other parties; in the event that any portion of said wharf is upon or in the public road or street, or upon the land of any private individual. A plat of said land hereby conveyed is herewith attached and is to be taken as a part of this deed."

344 *Note.*

The punctuation of that part of No. 3 which is in quotation is just as it appears in the deed as recorded. The several interests of the grantees in the deed is stated as follows, viz—Jacob Tome 117/400ths, Robt. A. Taylor 117/400ths, Joseph James Taylor 116/400ths and John L. Gittings 54/400ths which adds up rather strangely making in all 560/400ths We place the plat below as well as we can reproduce it.



D. Book 52 f. 290



A is the stone,
B is point in said line to sheet,
C is a point at high water mark,
D is a point at high water mark,
A. D is 3 poles,
B. C is 6 4/5 poles.

CHANDLER & CHANDLER,
Att'ys at Law, Bowling Green, Va.

May 8th, 1903.

See deed from —— —— (?) *et al.* to Georgeanna Williams *et al.* recorded in Westmoreland Co. & copy filed which mentions Port Royal wharf.

345 PLAINTIFF'S EXHIBIT No. 56. Filed with Depositions and Returned with Special Master's Report.

This deed made this 30th day of June, in the year 1869, between Addison L. Carter, of the one part, James K. Ball, of the second part, and Mary D. Carter of the third part. Whereas the said A. L. Carter is anxious to free from any and all incumbrances the body of his real estate located in the counties of Lancaster and Dinwiddie and whereas the said Mary D. Carter, wife of the said A. L. Carter, is willing to accept in lieu of and in full satisfaction of all her rights or dower in said lands a reasonable settlement in fee of certain parts of the same and certain articles of personal property. Now this deed witnesses in consideration of the premises and the further consideration which follows, that he, the said A. L. Carter, does by these

presents bargain and sell and convey unto the said James K. Ball all that tract of land lying on the Rappahannock river in the County of Lancaster known as Midway on which he now resides being the land conveyed to said Carter by his mother containing three hundred ninety-three acres and fourteen poles, the metes and bounds of which fully appear upon a plat made for the division of Smithfield among the heirs of John Smith in 1825 and of record in the office of Lancaster County Court together with the household and kitchen furniture, one bay and one sorrel horse, buggy and harness, one yoke of oxen, two cows, stock of hogs now on the land, ten sheep and the farming implements now on the said farm or belonging thereto. In trust that he, the said Ball, shall hold the said property for the sole and exclusive use and benefit of the said Mary D. Carter and that he shall hold the same subject to a power in the said Mary to dispose of and convey by will or deeds the said property whether covert or sole as she may wish. And the said Mary D. Carter upon her part in consideration of the said conveyance as before set out relinquishes and forever quits claim to any interest in right of dower in and to all and every part and parcel of land now owned and held by him, the said A. L. Carter, her husband and covenants and agrees that he may dispose of the same free from all and any claim by her and the said A. L. Carter warrants the title to the above granted lands and personal property to him the said James K. Ball generally. In testimony whereof witness the following signatures and seals this the day and year aforesaid.

A. L. CARTER. [SEAL.]
JAMES K. BALL. [SEAL.]
MARY D. CARTER. [SEAL.]

346 STATE OF VIRGINIA,
County of Lancaster, To-wit:

We, William McGinnis and William E. Humphreys, justices of the peace for the County of Lancaster, in the State of Virginia, do certify that Mary D. Carter, the wife of A. L. Carter, whose names are signed to the writing above, bearing date the 30th day of June, in the year 1869, personally appeared before us in the county aforesaid and being examined by us privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Mary D. Carter, acknowledged the said writing to be her act and declared that she had willingly executed the same and does not wish to retract it. Given under our hands this 22nd day of January, 1870.

WM. McGINNIS, *J. P.*
WM. E. HUMPHREYS, *J. P.*

Office of the Clerk of the County Court of Lancaster, August 11th, 1869.

This deed from Addison L. Carter to James K. Ball for the benefit of Mary D. Carter, was this day acknowledged before me in the office aforesaid by the said A. L. Carter, James K. Ball and Mary

Carter, parties thereto, and admitted to record as to the said Carter & Ball, and on the 22nd day of January 1870 the certificate of the acknowledgement of the said Mary D. Carter was received in the office aforesaid and admitted to record as to her.

Teste: WARNER EUBANK, *D. C.*

STATE OF VIRGINIA,
County of Lancaster, To-wit:

I, Wm. Chilton, clerk of the County Court for the county aforesaid, in the State of Virginia, do certify that the foregoing is a true copy from the records of said court.

Given under my hand this 28th day of May, 1903.

WM. CHILTON, *Clerk.*

347 PLAINTIFF'S EXHIBIT No. 57. Filed with Depositions and Returned with Special Master's Report.

This deed made the 14th day of July, in the year 1871, between James K. Ball, trustee, and Mary D. Carter of the first part, and A. L. Carter of the second part, all of Lancaster Co., Va. Witnesseth: That in consideration of thirty-five acres of land valued at $500, taken from Teagues farm and added to Midway by deed of even date with this indenture, the said James K. Ball, trustee, and Mary D. Carter do grant unto the said A. L. Carter thirteen acres and twenty-six perches, be the same more or less, valued at $500 and taken from Midway farm to be added to Monaskon, per plat by T. B. Robinson herewith filed as part of this deed, with general warranty. The said James K. Ball, trustee, and Mary D. Carter do covenant and agree that the said A. L. Carter, his heirs and assigns may have joint and free use of 40 feet in width from the line now separating Monaskon from Midway and parallel with low water mark as a highway to the wharf and the use of said wharf for all lawful purposes as long as it is kept up and used as a landing for an annual rent of ten dollars.

Witness the following signatures and seals.

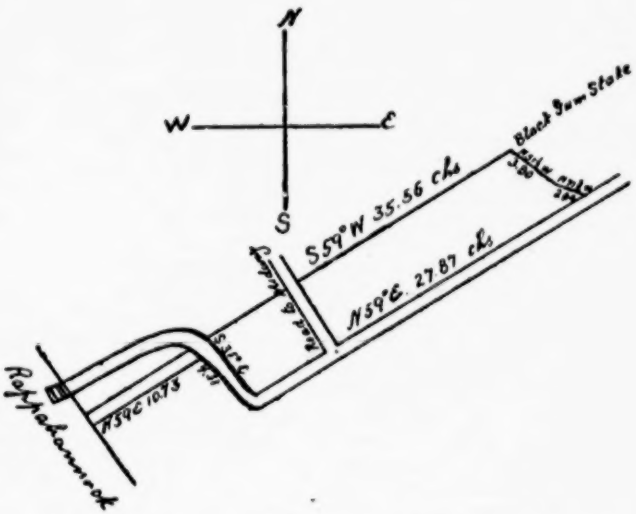
JAS. K. BALL. [SEAL.]
MARY D. CARTER. [SEAL.]

LANCASTER COUNTY, *To-wit:*

I, Wm. T. Snead, a justice of the peace in the county aforesaid, in the State of Virginia, do certify that James K. Ball and Mary D. Carter, whose names are signed to the deed above, bearing date July 14, 1871, personally appeared before me in my county aforesaid and acknowledged the same to be their act and deed and desired me to certify the same in order that the said deed may be recorded. Given under my hand and seal this the 14th July, 1871.

W. T. SNEAD, *J. P.*

348



Office of the Clerk of the County Court of Lancaster, January 3rd, 1872.

This deed from James K. Ball, trustee, and Mary D. Carter to A. L. Carter was this day received in the office aforesaid and together with the certificate of the acknowledgment of the said Ball and Carter thereto annexed, and the plat attached as a part of said deed, it being duly stamped, was admitted to record at 1¾ o'clock P. M.

Teste: WARNER EUBANK, *C. C.*

STATE OF VIRGINIA,
County of Lancaster, To-wit:

I, Wm. Chilton, clerk of the County Court for the county aforesaid, in the State of Virginia, do certify that the foregoing is a true copy from the records of said court.

Given under my hand this 28th day of May, 1903.

WM. CHILTON, *Clerk.*

349 PLAINTIFF'S EXHIBIT No. 58. Filed with Depositions and Returned with Special Master's Report.

This deed made and entered into this 17th day of July, 1871, between Addison L. Carter, of the county of Lancaster and State of Virginia, of the first part, and David Landreth, of the county of Bucks in the State of Pennsylvania, of the second part: Witnesseth: That the said Addison L. Carter, the party of the first part, for and in consideration of the sum of seventeen thousand three hundred and

twenty-five dollars, lawful money of the United States, to him in hand paid by the said David Landreth at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged by the said Addison L. Carter. He, the said Addison L. Carter, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said David Landreth, his heirs and assigns forever the three following tracts or parcels of land lying and being in the county of Lancaster and State of Virginia, with all their buildings, privileges and appurtenances whatsoever to them belonging, to-wit: The tract called and known as "Upper Granville," containing four hundred and seventy-five acres, purchased by said Addison L. Carter from Frances D. Jones, as will appear by deed bearing date the 8th of April, 1863, and of record in the clerk's office of Lancaster county, and was devised to the said Frances D. Jones by his brother, William Jones, purchased by the said William Jones from J. W. P. Dowman, by deed bearing date July 17th, 1824, it being a part of the same tract devised by John M. Gilmour in March, 1814, to William Gilmour, and which said part now sold by the said Carter is bounded as follows: On the North by the farm called Monaskon, which is also conveyed by this deed. East by the county road leading from White Chapel Church to Paynes Cross Roads. South by Lower Granville, formerly a part of this tract and now the property of John J. Osborne, and West by the Rappahannock River. Second, the tract or parcel of land known and called Monaskon, containing two hundred and five acres, be the same more or less, and bounded as follows: Beginning on the shore of the Rappahannock River and having for its northern boundary the strip of land purchased by the said Addison L. Carter from his wife, Mary D. Carter, and her trustee, James K. Ball, to the point in the plat of said tract of land made by Thomas B. Robinson interests with the road leading from Monaskon wharf to the county road, thence North by the remainder of Midway tract to the said county road, East by the said road leading from White Chapel Church to Paynes Cross Roads until it reaches the northern boundary of the said
350 Upper Granville South by Upper Granville to the Rappahannock River to the beginning, it being the same tract or parcel of land purchased by the said Carter from John S. Chowning, by deed bearing date January 1st, 1852, and then called Smithfield, purchased by Chowning from James T. Yerby, Nov. 1st, 1847. Said Yerby from William E. Hughlett, August 20, 1835, and Hughlett from Glascock and wife, August 22nd, 1833, all of which will more fully and at large appear by reference to said deeds of record in the clerk's office of Lancaster county, Virginia. Third, thirteen acres and twenty-six poles, a portion of the farm called Midway purchased by the said Addison L. Carter from his wife, Mary D. Carter, and her trustee, James K. Ball, adjoining the tract Monaskon and bounded as follows: Beginning at low water mark on the Rappahannock River at a point marked in the plat of the said Robinson and running East to a black gum stob marked in said plat, thence changing and running in a Southeastwardly direction until it intersects with the present road leading from Monaskon to the county road. South by the said Monaskon tract to the Rappahannock River and

West by the said river to the beginning, the said three tracts or parcels of land united thus in Upper Granville, Monaskon and the said piece of Midway containing six hundred ninety-three acres and twenty-six poles, and the whole thus united is bounded as follows: Beginning on the shore of the Rappahannock River at a point marked in the plat of the thirteen acres and twenty-six poles made by the said Robinson, county surveyor, and running East 59° North to a black gum stob marked in said survey; thence South 51¼ East 380 South 71¾ 2.44 East to the present road leading from Monaskon to the county road, then bounded on the north from the said point of intersection by Midway to the said county road, on the East by the county road, leading from White Chapel Church to Paynes Cross Roads, South by the Lower Granville tract to the Rappahannock River and on the West by the Rappahannock River along the shore of the Rappahannock to the beginning. To have and to hold to him the said David Landreth, his heirs and assigns forever, free from the claims of the said Addison L. Carter, his heirs and assigns and of all other persons whatever, and the title to the said three tracts or parcels of land, he the said Addison L. Carter forever warrants and defends. It is covenanted and agreed by and between the said Addison L. Carter and David Landreth that there shall be a road opened thirty feet wide from the low water mark on the Rappahannock River near the present wharf, fifteen of which shall be contributed by the said Carter and fifteen feet by the said Landreth to the main county road and be kept open for the use of the
351 said parties to this deed, their heirs or assigns, that portion contributed by said Carter shall revert to the owner of the farm Midway and the portion contributed by the said Landreth to the owners of the farm Monaskon, and it is further covenanted and agreed between the said parties that the said David Landreth, his heirs and assigns, shall have full and free right of passing to and from Monaskon wharf for all lawful purposes, and shall have the right to use forty feet in width and extending to low water mark of the land near the wharf so as to reach the wharf so long as the said wharf is kept up for use by the owners, for which right the said David Landreth binds himself, his heirs and assigns to pay an annual rental of ten dollars per year to the owners of said wharf. Witness the following signature and seal.

A. L. CARTER. [SEAL.]

Witness:

JAS. L. SULLIVAN.
B. H. ROBINSON.

Office of the Clerk of the County Court of Lancaster, January 3rd, 1872.

This deed from A. L. Carter to David Landreth was acknowledged in the office aforesaid by the said A. L. Carter at 2 o'clock P. M. and being duly stamped was admitted to record.

Teste: WARNER EUBANK, *C. C.*

STATE OF VIRGINIA,
County of Lancaster, To-wit:

I, Wm. Chilton, clerk of the County Court for the county aforesaid, in the State of Virginia, do certify that the foregoing is a true copy from the records of said court.

Given under my hand this 28th day of May, 1903.

WM. CHILTON, *Clerk.*

352 PLAINTIFF'S EXHIBIT No. 59. Filed with Depositions and Returned with Special Master's Report.

This agreement made the 21st day of June, in the year 1888, between Mary D. Carter of the 1st part, and B. H. Morgan of the second part, in the following manner. The said party of the first part in consideration of the sum of six thousand ($6000) dollars, with interest from July 1st, 1888, to be fully paid as hereinafter mentioned hereby agrees to sell unto the said party of the 2nd part, all that certain tract of land situated in the county of Lancaster known as Monaskon Wharf property and the Bluff field and bounded as follows: On the South by Landreth land, on the West by the Rappahannock River, on the North and East by Midway land and the creek between Midway dwelling house and Monaskon and the branch that leads from said creek southerly up to the middle of the road that leads to Monaskon wharf, supposed to contain eighty acres, more or less, but sold in gross. The party of the first part reserves the roadway through the Bluff field for her own usage and for all others holding under, by or through her. And the said party of the 2nd part hereby agrees to purchase said Monaskon wharf property and Bluff field at the said consideration of six thousand ($6000) dollars, with interest from July 1st, 1888, and to pay the same as follows:

On the first day of July, in the year 1889 $636.00.
On the first day of July, in the year 1890, 672.00.
On the first day of July, in the year 1891, 708.00.
On the first day of July, in the year 1892, 744.00.
On the first day of July, in the year 1893, 780.00.
On the first day of July, in the year 1894, 816.00.
On the first day of July, in the year 1895, 852.00.
On the first day of July, in the year 1896, 888.00.
On the first day of July, in the year 1897, 924.00.
On the first day of July, in the year 1898, 960.00.

And the said party of the 2nd part has executed his promissory notes accordingly and agrees that a failure to pay any one of the said promissory notes within twelve months after becoming due shall work a forfeiture of all subsequent ones and the entire debt for the purchase of the Monaskon wharf property and Bluff field will become due and the said party of the 2nd part further agrees to carry insurance on the store house for the purpose of rebuilding the same in the event of loss, to keep the wharf in good repair and also the other property, and to pay taxes on said Monaskon wharf property

and Bluff field. The said party of the 1st part on receiving
353 said payments at the time and in the manner above mentioned, shall at her expense execute and deliver to the said party of the 2nd part, or his assigns, a proper deed conveying to him the fee simple interest in said Monaskon wharf property and Bluff field, and it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties. In witness whereof the parties to these presents have hereunto set their hands and seals the date and year first above written.

MARY D. CARTER. [SEAL.]
B. H. MORGAN. [SEAL.]

Test:
WARNER BALL.
W. H. SALE.

STATE OF VIRGINIA,
County of Lancaster, To-wit:

I, Sam P. Gresham, Clerk of the County Court of the County aforesaid, do certify that B. H. Morgan whose name is signed to the foregoing writing bearing date the 21st day of June 1888 personally appeared before me in the Clerk's office of the County aforesaid and acknowledged the said writing to be his act. Given under my hand this 30th day of August 1888.

SAM P. GRESHAM, *C. C.*

STATE OF VIRGINIA,
County of Lancaster, To-wit:

I, Sam P. Gresham, Clerk of the County Court of the County aforesaid do certify that Mary D. Carter whose name is signed to the foregoing writing bearing date on the 21st day of June, 1888 personally appeared before me in the Clerk's office of the County aforesaid and acknowledged the said writing to be her act. Given under my hand this 3rd day of October 1888.

SAM P. GRESHAM, *C. C.*

VIRGINIA:

In the Clerk's Office of the County Court of Lancaster County the 3rd Day of October, 1888.

The foregoing contract was this day presented and together with the certificate annexed admitted to record.

Teste: SAM P. GRESHAM, *C. C.*

354 STATE OF VIRGINIA,
County of Lancaster, To-wit:

I, Wm. Chilton Clerk of the County Court aforesaid in the State of Va., do hereby certify that the foregoing is a true copy from the

records of said Court. Given under my hand this 28th day of May, 1903.

WM. CHILTON, *Clerk.*

PLAINTIFF'S EXHIBIT No. 60. Filed with Depositions and Returned with Special Master's Report.

I, Benjamin H. Morgan, hereby assign release and sell to B. L. Farinholt, all my right title and interest acquired in one hundred acres of land, more or less with store building and other buildings including granary, stables and other out houses, at Monaskon, Lancaster County, Va., which was obtained and purchased by me from Mary D. Carter during the summer of 1888 and of record by contract between Mary D. Carter and Benjamin H. Morgan during the summer of 1888, said contract having been witnessed by Warner Ball and —— Sale and recorded in the Clerk's office of Lancaster County Va., and for and in consideration of the sum of three hundred and twenty-eight — and thirteen cents, the amount said Benjamin H Morgan has advanced to Mary D. Carter on said purchase being paid him (Benjamin H. Morgan) cash in hand by said B. L. Farinholt and the obligation here made on the part of said B. L. Farinholt to pay the amount of the said Benjamin's notes to said Mary D. Carter, and to relieve him of the payment of the same assuming his Benjamin's H. Morgan's place in the contract with Mary D. Carter. Now and for the aforesaid consideration, the said Benjamin H. Morgan sell the aforementioned property to the said B. L. Farinholt absolutely and forever to him and his heirs, possession to said property in its entirety and all emoluments, rents and other advantages attached thereto, being passed absolutely into the possession of said B. L. Farinholt from this date. Thes said Benjamin H. Morgan obligates himself to execute when required any further papers if necessary to perfect and complete said B. L. Farinholt's title to same. Witness my hand and seal this eighteenth day of April eighteen hundred and eighty-nine.

B. H. MORGAN. [SEAL.]

Witnesses:
S. J. PALMER.
WALTER C. PALMER.
J. T. SISSONS.
R. A. WILSON.

355 $328.13. BALTIMORE, MD., *April* 19/89.

Received of B. L. Farinholt *The* Three hundred and twenty-eight and 13/100 dollars in full for cash payment on this contract.

B. H. MORGAN.

STATE OF MARYLAND,
City of Baltimore, To-wit:

I, G. Evett Reardon, a commissioner appointed by the Governor of the State of Virginia, for the said State of Maryland, certify that

B. H. Morgan, whose name is signed to the writing hereto annexed bearing date on the 18th day of April 1889, has acknowledged the same before me in my State aforesaid. Given under my hand this 20th day of April Anno Domini 1889.

[SEAL.] G. EVETT REARDON,
A Commisioner for Virginia in the State of Maryland, Residing at Baltimore City,
100 *E. Lexington St.*

VIRGINIA:

In the Clerk's Office of the County Court of the County of Lancaster, the 20th Day of April, 1899.

This agreement and assignment was presented and with the certificate annexed admitted to record.

Teste: SAM P. GRESHAM, *C. C.*

STATE OF VIRGINIA,
County of Lancaster, To-wit:

I, Wm. Chilton, Clerk of the County Court for the County aforesaid in the State of Virginia do certify that the foregoing is a true copy from the records of said court. Given under my hand this 28th day of May, 1903.

WM. CHILTON, *Clerk.*

356 PLAINTIFF'S EXHIBIT No. 61. Filed with Depositions and Returned with Special Master's Report.

This deed made this 30th day of June 1892 between B. L. Farinholt and Minnie L. Farinholt, his daughter. Witnesseth, that said B. L. Farinholt does hereby, in consideration of the sum of Five Dollars to him paid and the further consideration of love and affection shown to him B. L. Farinholt by the said Minnie L. Farinholt, and the great assistance rendered him by the said Minnie L. Farinholt for several years past, and further with a view to providing a comfortable home and income for her in case of the death of said B. L. Farinholt, Sell grant convey and release unto said Minnie L. Farinholt absolutely and in fee all the right title and interest which the said B. L. Farinholt has acquired by purchase from B. H. Morgan and Mrs. M. D. Carter or either of them, by written agreement recorded in the Clerk's office of Lancaster County, Va., (reference being made thereto for full and specific information and description of the same) in a tract of land situated at Monaskon Lancaster County Virginia, adjoining the lands of D. Landreth & Sons and Mrs. M. D. Carter, and fronting on the south of the Rappahannock River, containing Eighty Five (85) acres, be there ever so much more or ever so much less, with all the improvements, buildings, wharf tenements and privileges and rights of every description

belonging to the same and all right, title and income belonging to the said land and steam boat wharf attached thereto, including all money paid on same and all interest acquired by such payment as the said B. L. Farinholt has made thereon, to have and to hold — her the said Minnie L. Farinholt with the appurtenances thereunto belonging forever, and the said B. L. Farinholt does hereby direct and authorize Mrs. Mary D. Carter or her legal representative when the outstanding bonds for the deferred payments on said property shall have been paid, to make a deed for the same direct to said Minnie L. Farinholt for the whole of said property just as if she had been the original purchaser.

Given under my hand and seal this the 30th day of June 1892.

B. L. FARINHOLT. [s. s.]

357 STATE OF VIRGINIA,
County of Lancaster, To-wit:

In the County Court of Lancaster County, the 18th Day of July, 1892.

This deed bearing date on the 30th day of June 1892 was this day presented in court and acknowledged by B. L. Farinholt, whose name is signed thereto and ordered to be recorded.

Teste: SAM P. GRESHAM, *C. C.*

STATE OF VIRGINIA,
County of Lancaster, To-wit:

I, Wm. Chilton, Clerk of the County Court for the County aforesaid in the State of Virginia do certify that the foregoing is a true copy from the records of said court. Given under my hand this 28th day of May, 1903.

WM. CHILTON, *Clerk.*

PLAINTIFF'S EXHIBIT No. 62. Filed with Depositions and Returned with Special Master's Report.

Abstract of Conveyances Since the Year 1865 of the Property in Lancaster Co., Va., upon Which is Situated Monaskon Wharf.

In the year 1865 the fee simple title to all the land adjacent to Monaskon wharf was vested in A. L. Carter, since deceased.

June 30, 1869 A. L. Carter conveyed the land to which Monaskon Wharf is attached, to his wife, Mary D. Carter, in consideration of her waiver of her right of dower in his other lands. See Deed recorded in Deed Book No. 43 Page 254.

July 14, 1871, Mary D. Carter, conveys to A. L. Carter a road way 40 feet wide to the wharf, paralleled with, and extending to low water mark, and right to use of the wharf for all lawful purposes, at an annual rental of $10.00. Deed Book No. 43, Page 425.

July 17, 1871 A. L. Carter conveyed to David Landreth, his road way and right to use of wharf for all lawful purposes, acquired by

deed from Mary D. Carter, last aforesaid, in consideration of an-ual rental of $10.00. Deed Book No. 43 Page 426.

358 June 21, 1888 Mary D. Carter entered into a contract with B. H. Morgan for the sale of Monaskon Wharf & 85 acres land, more or less, thereto attached, for the consideration of $6000. payable in ten annual installments. Deed Book No. 46 Page 439.

April 18, 1889 B. H. Morgan conveyed all his right title and interest under contract last aforesaid, to B. L. Farinholt in consideration of the payment of $328.13, and the assuming of all the obligations of the said B. H. Morgan to Mary D. Carter. Deed Book No. 46 Page 563.

June 30, 1892 B. L. Farinholt conveyed for the consideration of $5.00, & love, affection &c., to his daughter, Minnie L. Farinholt all his right, title & interest in & to the property acquired by deed from B. H. Morgan, last aforesaid, being 85 acres of land and Monaskon Wharf attached. Deed Book No. 48 Page 6.

Mar. 2, 1895 There was filed and recorded a *Lis Pendens* in the Chancery suit, under the short style of Street, Receiver, *vs.* Farinholt & others, pending in the Circuit Court of Middlesex Co. Va., one of the objects of which was to annul and have declared void a deed to Minnie L. Farinholt, conveying all interest of B. L. Farinholt in Monaskon property. Filed by H. R. Pollard & W. W. Woodward. Att'ys for Pl'ff. Deed Book No. 48 Page 474.

A true abstract made from the records of the Clerk's Office of the County Court of Lancaster County Va., this 9th day of May 1903.

WM. CHILTON, *Clerk.*

PLAINTIFF'S EXHIBIT No. 63. Filed with Depositions and Returned with Special Master's Report.

This Deed made this 26th day of December 1872 between L. D. Roane and Josephine R. his wife of the first part, both of Essex Co. Va., and Claus L. Clauson of Richmond County Va. of the other part, Witnesseth, that in consideration of seven thousand dollars cash and securities, paid, by said Clauson to L. D. Roane & wife, they have and do by these presents grant sell and convey unto the said Clauson his heirs or assigns the landed property and real estate known and designated as Milden Hall, situated in Richmond County Va., and bordering on the Rappahannock River, formerly owned and held by the late — Cox of the said County of Richmond

359 and inherited under the laws of Va. by said Josephine R. Roane formerly Smith through her mother, who had been the wife of said Cox, to have and to hold the said property called "Milden Hall" with al- the improvements hereditaments and appurtenances thereto pertaining, unto the said Clausen his heirs and assigns forever save and except that the rights and privileges heretofore granted D. W. C. Sharp under a written agreement to the use of the Store House, lot and wharf on said property *one* known and to be observed by said Clausen and that the said Roane and the family of his said wife reserve the right of ingress and egress to and from the

family burial ground on said property with the privilege of continuing to use the same for the same purpose as heretofore. And the said L. D. Roane and wife covenant and agree that they have a good and perfect title in fee simple in and to said property, that they have lawful authority to sell the same and convey it to said Clausen and that they will forever warrant and defend the same unto the said Clausen his heirs and assigns free from all incumbrances except as hereinbefore stated.

Witness the following signatures and seals the day and year first herein written.

L. D. ROANE. [SEAL.]
J. R. ROANE. [SEAL.]

VIRGINIA, *Essex County, To-wit:*

I, H. W. Daingerfield a Commr. in Chancery for the County of Essex, State of Virginia do certify that L. D. Roane whose name is signed to the writing above bearing date on the 26th day of December 1872 personally appeared before me in my County aforesaid and acknowledged the said writing to be his act.

Given under my hand this 26th day of Decr. 1872.

H. W. DAINGERFIELD, *Com'r.*

VIRGINIA, *Essex Co., To-wit:*

I, H. W. Daingerfield a Commr. in Ch'y for the County of Essex & State of Va. do certify that Josaphine R. Roane, the wife of L. D. Roane whose names are signed to the writing above, bearing date on the 26th day of Decr. 1872 personally appeared before me in my County aforesaid and being examined by me privily and apart from her said husband and having the writing aforesaid fully explained to her, she the said Josaphine R. Roane acknowledged the said writing to be her act and declared she had willingly executed the same and does not wish to retract it.

Given under my hand this 26th day of Decr. 1872.

H. W. DAINGERFIELD, *Com'r.*

360 Clerk's Office, County Court of Richmond County, the 6th Day of January, 1873.

This deed of bargain and sale from L. D. Roane and wife to C. L. Clausen, bearing date the 26th day of December 1872, was this day presented in the office aforesaid and with the certificate thereto annexed admitted to record.

Teste: B. W. BROCKENBROUGH, *D. C.*

A Copy—Teste: J. B. RAINS, *Clerk.*

PLAINTIFF'S EXHIBIT No. 64. Filed with Depositions and Returned with Special Master's Report.

This deed made the 28th day of April, A. D., 1876, between Claus L. Clausen and Bergetha Clausen, his wife, of the County of Richmond, and State of Virginia, of the first part, and Georgeanna Williams, wife of Henry Williams, and Matilda S. Forbes, wife of Sydney H. Forbes, of the City of Baltimore, in the State of Maryland, of the second part, Witnesseth: That said parties of the first part in and for the consideration of one thousand dollars to them paid, the receipt whereof is hereby acknowledged, do grant and convey and generally warrant unto the said Georgeanna Williams and Matilda S. Forbes, their heirs and assigns forever, the following property to-wit: The wharf on the Rappahannock river in front of the farm Milden or Milton Hall in Richmond County, Virginia, known as Milton wharf, with the warehouse, track and car thereon, and also the ground at the land end of the wharf described as follows: Beginning at low water mark on the west or upper side of the wharf two feet east of Winslow & Co.'s Canning House, thence along Northeasterly between the wharf and said Canning House to a stake two feet East of the South East corner of said Canning House, thence North 89 feet to a stake in line with the west side of Main street and also in line with the river front of the Verandah before Sharp's store, thence South East to East 56 feet to a stake 4 feet west of said Verandah before Sharp's store, thence in a straight line to low-water mark of the river four feet East of the wharf, this line passing through Sharp's boat-house, thence up the river to the place of beginning. *Provided, however*, that D. W. C. Sharp's right under a lease from William Sharp and L. D. Roane to free use of the wharf for his own merchandise shall be respected. The said parties of the first part also grant free road over the Milton Hall property, where it is now
361 located, for the public, to and from the Milton wharf, so long as the wharf is kept up in the same place.

Witness the hands and seals of the said parties of the first part the day and year above written.

C. L. CLAUSEN. [L. S.]
BERGETHA CLAUSEN. [L. S.]

STATE OF VIRGINIA,
County of Richmond, ss:

I, Thomas Oldham, a commissioner in chancery for the County and State aforesaid, do certify that Claus L. Clausen whose name is signed to the above writing, bearing date the 28th of April, 1876, personally appeared before me in my county aforesaid and acknowledged the writing to be his act.

Given under my hand this 28 day of April, A. D., 1876.

THOS. OLDHAM, *Comm'r.*

STATE OF VIRGINIA,
County of Richmond, ss:

I, Thomas Oldham, a commissioner in chancery for the County and State aforesaid, do certify that Bergetha Clausen, the wife of C. L. Clausen, whose names are signed to the above deed, bearing date April 28th, 1876, personally appeared before me, and being examined by me privily and apart from her said husband, and having the writing aforesaid fully explained to her, she, the said Bergetha Clausen, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand this 28th day of April, A. D. 1876.

THOS. OLDHAM, *Comm'r.*

Clerk's Office, County Court of Richmond County, in the State of Virginia, May 30th, 1876.

This deed of bargain and sale bearing date on the 28th day of April, 1876, was this day presented in the office aforesaid and thereupon admitted to record with the certificate annexed.

Teste: L. D. WARNER, *Clerk.*

A Copy—Teste: J. B. RAINS, *Clerk.*

362 PLAINTIFF'S EXHIBIT No. 65. Filed with Depositions and Returned with Special Master's Report.

This Deed, Made this Fourth day of January, in the year eighteen hundred and ninety-two, by us, Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sydney H. Forbes, her husband, all of the City of Baltimore State of Maryland.

Witnesseth, That in consideration and fulfilment of a contract between us and The Weems Steamboat Company, of Baltimore City, a corporation duly incorporated, and also of one dollar, to us in hand paid, the receipt of which is hereby acknowledged, we, the said Gorgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sydney H. Forbes, her husband, do grant unto the said The Weems Steamboat Company, of Baltimore City, its successors and assigns, the wharf on the Rappahannock River known as "Sharp's" or "Milton Wharf," in the County of Richmond, State of Virginia, lately used by the Weems Line of Steamers, together with the land adjacent thereto and used therewith, including the following described lot of ground; to-wit:

Beginning for the same at low water mark on the West or upper side of the wharf two feet East of Winslow and Company's canning house, thence along North-easterly between the wharf and said canning house to a stake two feet East of the South-east corner of the said canning house, thence North eighty-nine feet to a stake in line with the West side of Main Street and also in line with the river front of the verandah between Sharp's store, thence Southeast to

East fifty-six feet to a stake four feet West of said verandah before Sharp's store, thence in a straight line to low water mark of the River four feet East of the wharf, this line passes through Sharp's boat house, thence up the River to the place of beginning, being the same lot or parcel of ground and appurtenances, which, by deed dated 28th April, 1876, and recorded in Liber No. 32, folio 162, one of the Land Records of Richmond County, was conveyed by Claus L. Clausen and wife to Georgeanna Williams and Matilda S. Forbes.

Witness the following signatures and seals.

GEORGEANNA WILLIAMS. [SEAL.]
HENRY WILLIAMS. [SEAL.]
MATILDA S. FORBES. [SEAL.]
SYDNEY H. FORBES. [SEAL.]

Test:
WM. H. MASSON.

363 STATE OF MARYLAND,
City of Baltimore, To-wit:

I hereby certify that on this 4th day of January, 1892, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sydney H. Forbes, her husband, and acknowledged the foregoing Deed to be the act and deed of each of them, respectively.

In testimony whereof I have hereunto set my hand and affixed my Notarial Seal the day and year above written.

WM. H. MASSON,
[SEAL.] *Notary Public.*

Clerk's Office of the County Court of Richmond County, (Virginia) January 8, 1892.

The foregoing deed bearing date on the 4th day of January, 1892, was this day received in the office aforesaid, and together with the certificate annexed, admitted to record at 9 o'clock, A. M.

Teste: L. D. WARNER, *Clerk.*

A Copy—Teste: J. B. RAINS, *Clerk.*

PLAINTIFF'S EXHIBIT No. 66. Filed with Depositions and Returned with Special Master's Report.

Sharp's Wharf Property.

Owned in 1865 by Josaphine R. Roane.

Deeds:

Dec. 26, 1872, L. D. Roane and Josaphine R. his wife to C. L. Clausen conveying with general warranty, a fee simple title, "save and except that the rights and privileges heretofore granted D. W. C.

Sharp, under a written agreement, to the use of the store house, lot and wharf on said property, one known to be observed by said Clausen, and that said Roane and wife and the family of his said wife reserve the right of ingress and egress to and from the family burial ground on said property with the privilege of continu-
364 ing to use the same for the same purposes as heretofore."
(See Deed Book 31 p. 382.)

*May 17, 1882 C. L. Clausen and wife to D. W. C. Sharp, with general warranty conveying a fee simple title to the property in question.
(See Deed Book 33 p. 231.)

I find no deed on record conveying this property to the Weems Co. although it is listed.
*This deed conveys the property facing the wharf *proper*—for deed conveying wharf property, see next page.

On the Land Book of 1902 in the name of the Weems Steamboat Co.
Perhaps the deed has been given, but not recorded.
N. B.
Since writing the above I have found a deed from C. L. Clausen & wife to Georgianna Williams and Matilda S. Forbes made Apr. 28, 1876 deeding the Wharf *itself* and a *small* strip at its shore end.
See Deed Book 32 p. 162.

Jan. 4, 1892, Georgeanna Williams and husband and Matilda S. Forbes and husband to The Weems Steamboat Co. conveying the Wharf on the Rappahannock river known as Sharps or Miltons.
See Deed Book 35 p. 263.

O. L. SHACKLEFORD, *Att'y.*

365 PLAINTIFF'S EXHIBIT No. 67. Filed with Depositions and Returned with Special Master's Report.

I, Edward M. Ware of Belleview in the County of Essex do make this my last will and testament hereby revoking all others.
I lend to my beloved wife Cath*e*rine E. Ware for and during her natural life the farm on which we reside called Bellview, also all the negroes (and their increase) received from the estate of her father, also one man and girl such as she may select from my other negroes and also the privilege of exchanging any of the aforesaid negroes received from her said fathers estate for any other of my negroes of equal value. I also lend her such of my household and kitchen furniture as she may select and give to her such stock farming implements and provisions as will be necessary for one year and a comfortable carriage and a pair of good horses to be purchased for her by my executors. And upon the condition that she relin*q*uish her right to and give up the land given her by her said father called "Lowries." I also lend to her for and during her life the sum

of Eight thousand dollars with the privilege of giving Two thousand thereof to our children in such proportions as she may wish, the remaining Six thousand dollars at her death to be equally divided among all my children viz: Robert L. Ware, Hannah E. Hoskins, Emma C. Ware and Edward M. Ware. I hold about Five hundred dollars which belongs to my said wife the proceeds of her dairy &c., which I hereby direct to be paid to her. I also direct that my executors pay to her the further sum of $500.00 to be used for such purposes as she wishes.

2. To my daughter Hannah E. Hoskins I have given a portion of the farm on which she resides called Midway for which portion I paid Ten thousand seventeen dollars and fifty cents (see deed of record in the Clerk's office of Essex County Court) which is to be in full of her part of my land in said county.

3. I give to my son Robert L. Ware the lands I purchased of Henry Harwood called Waterview and Ann Youngs and the sum of Two thousand dollars from which his account is to be deducted and if his account exceeds said sum of Two Thousand dollars then he must account for the excess in the distribution of my estate.

4. I give to my daughter Emma C. Ware the farm I lately purchased called "Tuscarora" and the sum of Two thousand
366 dollars and Five hundred dollars to be held as hereinafter directed and I also give her the sum of One thousand dollars for the completion of her education.

5. To my son Edward M. Ware I give the farm called Belleview at the death of his mother with all of the stock, furniture and farming implements which may then be thereon and I also give him the sum of Sixteen hundred dollars for the completion of his education and any further sum that may be necessary for that purpose. I also give to him a horse saddle and bridle or a sum sufficient for the purchase thereof.

6. Should my beloved wife relinquish her right to and give up the said land before referred to called "Lowries" then my son Robert L. Ware may take the same at valuation, and the interest on such valuation must be paid annually to my son E. M. Ware during the life of his mother. Should she elect to hold said land and cultivate it with Bellview with my son E. M. Ware she will do so or pay to my said son the interest on the $2000. part of the $8000. which she will receive as aforesaid and which must be paid to her by my executors.

7. Before the division of my negroes among my children I direct that my daughter Emma C. Ware and my son Edward M. Ware shall each select and have one of equal value with those heretofore given by me to my son Robert L. Ware and my daughter Hannah E. Hoskins.

8. I direct that my farm in Richmond County called Cobham Park be sold by my executors hereinafter named at such time and on on such terms as they in their discretion may judge best.

9. After the payment of my just debts and the legacies herein named I desire that all my estate not disposed of by this will shall be equally divided between all my children.

10. All the money or other property which either of my daughters

shall receive from my estate shall be considered and held as real estate the *the* interest and profits to be paid to them during their lives and at their deaths the principal to be paid to their children.

11. Should any of my children die leaving no child or children, then their portions of my estate shall be divided among the survivors and the children of any who may be dead, the child or children of the deceased, taking such part as the father or mother would have taken if alive.

367 12. I have appointed my beloved wife Catherine E. Ware the guardian of my daughter Emma C. Ware and of my son Edward M. Ware and direct that no security be required of her.

13. I appoint my son Robert L. Ware and my son-in-law John T. Hoskins the Executors of this my last will.

14. In addition to the former provisions made herein for my son Edward M. Ware I give to him my interest (being one-half) in the mill held and owned by Mr. Geo. W. Phillips and myself with full power and authority to his said guardian to sell and convey the same whenever she in her discretion shall deem it advisable so to do and hold or invest the proceeds of such sale for the benefit of my said son E. M. Ware.

Given under my hand and seal this 16th day of March 1863.

E. M. WARE. [SEAL.]

Interlineations made on opposite page before signing.

Signed and sealed in our presence and acknowledged by said Edward M. Ware to be his last will and testament.

MUSCOE GARNETT.
JAMES A. DUNN.
J. S. TRIBLE.

I, Edward M. Ware do make this codicil to my foregoing will which has date the 16th day of March 1863 as follows in addition to the provisions made in my said will for my son Robt. L. Ware I give the sum of Fifteen hundred dollars for the purpose of repaying the damage done by the soldiers to the land and houses at Waterview and should he recover anything from the Confederate States on that account he must account for the amount so recovered to my estate. I also give to my daughter Emma C. Ware in addition to the former provisions for her a neat piano or melodian as she may prefer, to be purchased and paid for by my executors and in like manner to my son Edward M. Ware a good silver watch. Witness my hand & seal this 20th March 1863.

EDWARD M. WARE. [SEAL.]

The above interlineations made before signing or sealing.

Witness:
MUSCOE GARNETT.
JAMES A. DUNN.
J. S. TRIBLE.

368 At a monthly Court begun and held for Essex County at Hollywood in said county on the 20th day of April 1863 that being the place of holding the said Court, pursuant to the proclamation of the Governor of Virginia (to that effect) made on the 9th day of March 1863.

This last Will and Testament of Edward M. Ware decd. with the Codicil thereto annexed being brought into court and offered for proof whereupon Muscoe Garnett and James A. Dunn, two of the subscribing witnesses to the said will and codicil (the said Garnett by affirmation.) and the said Dunn upon oath deposes and says that they heard the Testator acknowledge the said will and codicil to be his last will and testament, that they were both present at the same time, when the said will and codicil were signed and acknowledged by the Testator and that they both subscribed their names as witnesses thereto in his presence and at his request and that he was in perfect sense and memory at the time of executing the same, and thereupon the said will and codicil are ordered to be recorded as the last will and testament of the said Edward M. Ware decd. On the motion of John T. Hoskins one of the nominal executors in the body of the said will a certificate is granted him in order to his obtaining probat- of the same will in due form of law, he having first taken the oath in such cases required by law and *and* entered into a bond payable to the Commonwealth of Virginia in the penalty of One hundred thousand dollars with sureties approved by the court, which said bond being conditioned as the law directs, is acknowledged by the obligors and also ordered to be recorded.

Teste: JAMES ROY MICOU, *Clerk.*

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

PLAINTIFF'S EXHIBIT No. 68. Filed with Depositions and Returned with Special Master's Report.

This Deed made this 1st day of June 1875 between R. L. T. Beale, and W. W. Walker Commissioners acting under decree of the Circuit Court of Richmond County in Braxton *vs.* Carter's Admr. &c., of the one part, and John S. Braxton of the other, witnesseth that the said Beale & Walker did heretofore jointly with George Walker sell at auction, and do now by these presents grant, and convey, for and in consideration of one thousand dollars, settled by said Braxton as appears in report of Commissioner Oldham filed in the cause above referred to, unto him the said John S. Braxton all that certain parcel or tract of land lying in Stonewall Township,
369 Richmond County, near Carter's Wharf, known as the Brinham Tract, and containing about two hundred acres. To Have and To Hold unto him the said John S. Braxton his heirs and assigns forever, with special warranty. Witness the following signatures, and seals.

R. L. T. BEALE. [SEAL.]
W. W. WALKER. [SEAL.]
Commissioners.

STATE OF VIRGINIA,
County of Westmoreland, To-wit:

I, R. H. Beale, a Notary Public in and for the State & County aforesaid do hereby certify that R. L. T. Beale & W. W. Walker whose names are signed to the above deed dated June 1st 1875 personally appeared before me in my County aforesaid and acknowledged the same.

Given under my hand this 6th day of August 1875.

R. H. BEALE, *N. P.*

Clerk's Office, County Court of Richmond County, June 5th, 1876.

The foregoing deed of conveyance from Beale & Walker, Commissioners to John S. Braxton, was this day presented in the office aforesaid and therein admitted to record with the certificate annexed.

Teste: L. D. WARNER, *Clerk.*

A Copy—Teste: J. B. RAINS, *Clerk.*

PLAINTIFF'S EXHIBIT No. 69. Filed with Depositions and Returned with Special Master's Report.

This Deed made this 24th of January 1876 between Jno. S. Braxton and Olivia J. his wife of the one part and Thomas Croxton of the other part. Whereas the said Braxton is indebted by judgments to the estate of the late Ro. W. Carter to *to* the estate of the late Atterson Clarke and to the estate of the estate of the late R. F. Harwood, all of which judgments are of record in the Clerk's office of Richmond County, and for the payment of which as hereinafter provided the said Braxton wishes to make arrangement—Now therefore in consideration of the premises and of five dollars in hand paid the said Braxton by the said Croxton, he the said Braxton and his said wife do grant and convey to said Croxton, the tract of
370 land called "Bringhams" lying in Richmond County, Va., estimated as containing two hundred acres more or less, lying near Carter's Wharf being the land purchased by Jno. S. Braxton of W. W. Walker & R. L. T. Beale Com'rs to make sale of the real estate of the late Wm. Carter and the same conveyed to said Braxton by J. M. Mathews substituted as Assee. in Bankruptcy of Jno. S. Braxton in the place of Wm. H. Alderdice removed, by deed dated the 21st day of January 1876 and recorded in the Clerk's office of Richmond Co. In trust first from the proceeds of sale which have been agreed upon at one thousand dollars to M. A. Carter & brother to pay one hundred dollars the cost and expenses incurred in obtaining said Braxton's discharge in Bankruptcy next the costs of recording and preparing deeds and a Comm. of five per cent. to said Croxton on the sales—next twenty-five per cent. of the judgment due said Harwood's estate and the balance, or so much as may be required, he shall pay pro rata to the judgments due the estates of R. W. Carter, Caroline Clarke & Atterson Clarke if any remains he

shall pay over the same to said Braxton. Said Braxton & wife covenant that they will warrant such title as they have under the deed from J. M. Mathews Assee. as aforesaid. unto said Croxton, upon the trusts aforesaid and said Olivia J. Braxton intends hereby to convey her dower interest in said land in order to rid her husband of the said judgment liens, which are the only liens for his personal debts against him. Witness the following signatures and seals.

The words Caroline Clarke on first page interlined before signed.

JNO. S. BRAXTON. [L. S.]
OLIVIA J. BRAXTON. [L. S.]

VIRGINIA, *Richmond Co., To-wit:*

I. T. Oldham, a Com'r in Chancery for the County of Richd. State aforesaid do certify that Jno S. Braxton whose name is signed to the writing above bearing date on the 24th January, 1876 has acknowledged the same before me in my County aforesaid. I do further certify that Olivia J. Braxton the wife of Jno. S. Braxton whose names are signed to the said writing, personally appeared before me in my county aforesaid and being examined by me privily and apart from her said husband and having the writing aforesaid fully explained to her, she the said Olivia J. Braxton acknowledged the said writing to be her act & declared she had willingly executed the same and does not wish to retract. Given under my hand this 3rd day of March 1876.

TH: OLDHAM, *Com'r.*

371 Clerk's Office, County Court of Richmond County, June 5th, 1876.

The foregoing deed of trust from John S. Braxton & wife to Th: Croxton, trustee, was this day presented in the office aforesaid and therein admitted to record with the certificate annexed.

Teste: L. D. WARNER, *Clerk.*
A Copy—Teste: J. B. RAINS *Clerk.*

PLAINTIFF'S EXHIBIT No. 70. Filed with Depositions and Returned with Special Master's Report.

This Deed made and entered into this 6th day of March 1876 between T. Croxton trustee for Jno. S. Braxton and wife in deed this day recorded in the Clerk's office of Richmond County of the one and M. A. and J. W. Carter of the other part. Whereas Jno. S. Braxton at a sale of real estate made under decree of the Cir. Ct. of Richd. Co. in the Chy. cause of Braxton *vs.* Carter's Adm'r &c. became the purchaser of the tract of land called Brinhams & fully paid for the same as is shown by deed from R. L. T. Beale and W. W. Walker Com'rs in said cause made June 1st 1875 and this day recorded in the Clerk's office of Richmond County and whereas the said land was surrendered in the Bankrupt schedule of said Braxton, sold by Wm. H. Alderdice Assee. purchased by said Braxton & again

conveyed to him by deed from J. M. Mathews Assee. substituted in the place of said Alderdice, removed by order of the Dist. Ct. of the U. S. made January 21st 1876 and recorded in Clerk's office Richd. Co. this day—And whereas the said Jno. S. Braxton and wife by deed this day recorded in said Clerk's office of Richmond County conveyed said land to said Croxton in trust to complete a sale and conveyance of said land to the grantees in this deed at the price of One thousand dollars, to be disposed of by said trustee according to the provisions of said trust deed. Now therefore in consideration of the premises and of one thousand dollars in hand paid the said Croxton by the said M. A. & J. W. Carter, he the said Croxton doth grant sell and convey unto the said M. A. & J. W. Carter all the right title and interest vested in him by said deed from Braxton & wife in the tract of land called Brinhams lying in Richmond County Va. estimated to contain two hundred acres, but sold in gross, adjoining the Fauntelroy lands on the east and north, or Bernard—west of Kelly's Cliffs and south by the Rappahannock River.

Witness the following signatures and seals.

TH: CROXTON, *Trus.* [L. S.]

372 Clerk's Office, County Court of Richmond County, June 5th. 1876.

This deed of bargain and sale from Th. Croxton trustee M. A. & J. W. Carter was this day personally acknowledged by Th. Croxton, trustee, whose name is signed hereto before me in said office and thereupon admitted to record.

Teste: L. D. WARNER, *Clerk.*

A Copy—Teste: J. B. RAINS, *Clerk.*

PLAINTIFF'S EXHIBIT No. 71. Filed with Depositions and Returned with Special Master's Report.

This deed made and entered into this the first day of January in the year One thousand Eight hundred and Eighty, between James W. Carter, of the first part, and Miskel A. Carter of the second part, both parties now residents of the County of Richmond and State of Virginia, Witnesseth, that for and in consideration of the sum of one thousand dollars and other valuable considerations to him the said James W. Carter in hand paid, by the said Miskel A. Carter, the receipt whereof is hereby acknowledged, he the said James W. Carter, hath bargained and sold, and do by these presents, bargain sell and convey unto the said Miskel A. Carter, and unto his heirs and assigns forever, all the right title or interest, that he the said James W. Carter has or holds in the tract or parcel of land known as Brinhams; Scott's, and Carter's Wharf, the said tract of land is the same that William Carter purchased of R. M. Bragg, and wife and Miss A. J. Purcell bounded on the South by the Rappahannock River, on the West by the lands known as Kelley's Cliffs, on the North and East by the lands known as Faunt Le, Roys and Elizabeth Bernard,

the part or interest that the said James W. Carter owns, or claims to own, or hold in the said lands, buildings, and improvements of every kind, thereto attached, or belonging, in any way whatever, is one undivided half, the said Miskel A. Carter being the owner of the other half of said lands buildings wharf, with all the appurtenances thereto attached or belonging and the said James W. Carter covenants that he has the right to convey the said undivided half interest in and to the aforesaid lands wharf, Buildings with all their improvements and appurtenances thereto belonging, to the said Miskel A. Carter his heirs or assigns forever, and that he will warrant, generally, and specially the property herein conveyed.

Witness the following signatures and seals.

J. W. CARTER. [SEAL.]

Test:

THOS. E. PULLEN.

373 COUNTY OF RICHMOND,
State of Virginia, To-wit:

I, Chas. H. Balderson a Justice of the Peace in and for the County and State aforesaid, do certify that James W. Carter, whose name is signed above *this* to this deed bearing date as of the first day of January 1880 has acknowledged the same before me in my County aforesaid.

Given under my hand this the 19th day of January 1880.

CHAS. H. BALDERSON, *J. P.*

Clerk's Office, County Court of Richmond County, March 25th, 1882.

The foregoing deed executed by James W. Carter and dated Jany. 1st 1880, was this day presented in the office aforesaid and together with the certificate annexed therein admitted to record.

Teste: L. D. WARNER, *Clerk.*

A Copy—Teste: J. B. RAINS, *Clerk.*

PLAINTIFF'S EXHIBIT No. 72. Filed with Depositions and Returned with Special Master's Report.

This Deed made this 21st day of January 1876 between James M. Matthews assignee in Bankruptcy of John S. Braxton of the County of Richmond and State of Virginia. Who was adjudged a bankrupt by W. W. Forbes one of the Registers in Bankruptcy, in the United States District Court for the Eastern District of Virginia on the 18th day of February 1873, party of the first part, and the said John S. Braxton, party of the second part. Witnesseth:

Whereas, By virtue of the power conferred upon Wm. H. Alderdice former assignee of the said bankrupt, by an Act of Congress, entitled "An Act to Establish a uniform system of Bankruptcy throughout the United States; approved March 2nd 1867, as also by deed of Assignment to said Alderdice by said Register dated 1st day

of April 1873, the said Alderdice did sell by order of the United States District Court aforesaid dated June 9, 1873, at public auction, in the City of Richmond, all the said Bankrupt's right, title and interest in the real estate hereinafter described. And, whereas, the said sale was confirmed by the said United States District Court, on the 5th day of August 1873, and the said Alderdice assignee aforesaid was authorized to make but failed to make conveyance of said property to the said John S. Braxton, the purchaser thereof. And, whereas by a further order of the said District Court made on the 17th day of January 1876 the said James W. Matthews was appointed assignee of the said bankrupt in the stead of the said Alderdice, re-
374 moved, and was authorized to make to the said bankrupt, the purchaser aforesaid, a good and sufficient deed for the real estate, sold as aforesaid, with special warranty. Now, therefore, in consideration of the sum of eight hundred and twenty dollars paid by the said John S. Braxton, to the said Wm. H. Alderdice, former assignee as aforesaid, (the said Braxton being the highest bidder at said sale) the said James M. Matthews as assignee substituted in the place of said Alderdice, doth hereby grant, with special warranty, unto the said John S. Braxton, a certain tract of land in the County of Richmond aforesaid, containing two hundred acres, more or less, called Brinhams, purchased by said Braxton at sale of Wm. Carter, decd. from commissioners appointed to make sale under decree of the Circuit Court of said County—Also, one moiety of another tract or parcel of land, in the said County containing ninety-six acres that was bought jointly by said Braxton and Henry C. Curtis from Wm. C. Oldham trustee of John T. Willard, with all the appurtenances whatsoever belonging or in anywise appertaining, to have and to hold the same to the said John S. Braxton his heirs and assigns, to his and their use forever.

Witness the following signature and seal.

JAMES M. MATTHEWS, *Assignee.* [SEAL.]

The words "but failed to make" interlined on 1st page before signed.

STATE OF VIRGINIA,
Corporation of Richmond City, To-wit:

I, Wm. B. Matthews, a Notary Public for the Corporation aforesaid, in the State of Virginia, do certify that James M. Matthews whose name is signed to the above writing, bearing date on this day, has acknowledged the same before me in my Corporation aforesaid.

Given under my hand this 21st day of January A. D. 1876.

WM. B. MATTHEWS, *N. P.*

Clerk's Office, County Court of Richmond County, June 5th, 1876.

The foregoing deed of conveyance from James W. Matthews, Assignee, to John S. Braxton was this day presented in the office aforesaid and is admitted to record.

Teste: L. D. WARNER, *Clerk.*

A Copy—Teste: J. B. RAINES, *Clerk.*

375 PLAINTIFF'S EXHIBIT No. 73. Filed with Depositions and Returned with Special Master's Report.

Carter's Wharf Property.

Owned prior to 1865 by Wm. Carter who died in 1860 leaving certain children.

Purchased by John S. Braxton of W. W. Walker and R. L. T. Beale Commissioners appointed to make sale of the real estate of Wm. Carter in the year 1875, Dec. 4.

(See Deed Book 32 p. 167.)

Deeds.

Jan'y 24, 1876 John S. Braxton and wife to Croxton, Trustee.

(See Deed Book 32 p. 169.)

Mch. 6, 1876 Thos. Croxton trustee to M. A. & J. W. Carter conveying property in question with special warranty.

(See Deed Book 32 p. 170.)

Jan. 1, 1880 James W. Carter to M. A. Carter, conveying with general warranty ½ undivided interest; M. A. Carter owning the 1 undivided interest.

(See Deed Book 33 p. 188.)

N. B.—M. A. Carter has recently died intestate, leaving widow and several children. Deed from Matthews Assn. to John S. Braxton which is referred to in one of the above deeds. Matthews Assignee *to* Braxton to Braxton Jan. 21, 1876.

O. L. SHACKLEFORD, *Att'y.*

376 PLAINTIFF'S EXHIBIT No. 74. Filed with Depositions and Returned with Special Master's Report.

This indenture made this 29th day of October in the year of our Lord one thousand eight hundred & sixty-three. Between John R. Marchant & Thomas H. Massey, both of the County of Westmoreland & State of Virginia. Witnesseth, That the said John R. Marchant, for & in consideration of one thousand dollars in hand paid by the sd Thomas H. Massey at & before the ensealing & delivery of these presents the receipt whereof is hereby *is hereby* acknowledged, have granted bargained, sold, aliened, enfeoffed and confirmed and by these presents do grant, bargain, sell, alien, enfeoff & confirm unto the sd. Thomas H. Massey his heirs and assigns forever, to, & for his only proper use & behoof a certain Lot in the Town of Leeds & *and* containing Three fourths of an acre more or less and bounded on the East by the land of John Spilman, on the North & West by the land of Henry Taylor, & the South by the Rappahannock River,

together with all & every the tenements, hereditaments, rights, privileges and immunities to the said lot of land belonging or in any wise appertaining, and the reversion & reversions, remainder & remainders, rents issues & profits thereof and of every part or parcel thereof, and the sd. John R. Marchant for himself, his heirs, Exrs. & Admrs. covenant, promise & agree to & with the sd. Thomas H. Massey his heirs & assigns in manner & form following, That is to say That he the sd. John R. Marchant, the sd. lot of land, with its appurtenances unto the sd. Thomas H. Massey his heirs, & assigns against the claim or claims of him the said John R. Marchant, his heirs and *every* other person or persons whomsoever shall, & will, warrant, & defend by these presents.

In Testimony whereof the sd. John R. Marchant, has hereunto subscribed his name, & affixed his seal the day and year in this Indenture first written.

JOHN R. MARCHANT. [SEAL.]

WESTMORELAND COUNTY, *To-wit:*

I, Chas. C. Jett a Justice of the Peace for the County aforesaid in the State of Virginia, do certify, that John R. Marchant whose name is signed to the writing above, bearing date on the 29th of October, has acknowledged the same before me in my County aforesaid.

Given under my hand this 29th day of Octo. 1863.

CHAS. C. JETT, *J. P.*

377 VIRGINIA:

Clerk's Office of Westmoreland County, October 29th, 1863.

The foregoing deed of bargain and sale from John R. Marchant to Thomas H. Massey, conveying real estate, was this day received in my office and with the certificate of acknowledgment thereon endorsed, admitted to record.

Teste: J. WARREN HUTT, *Clk.*

Recorded and Examined.

Teste: J. WARREN HUTT, *Clk.*

A Copy—Teste: J. WARREN HUTT, *Clerk.*

PLAINTIFF'S EXHIBIT No. 75. Filed with Depositions and Returned with Special Master's Report.

Stamped $1.50.

This deed made this twentieth day of December, in the year one thousand eight hundred and sixty-nine, between Thomas H. Massey of the County of Westmoreland in the State of Virginia of the first part and Jacob Tome, Robert A. Taylor, Joseph Jas. Taylor, John P. Gettings, Mason L. Weems and Theodore Weems of the City of Baltimore and of the State of Maryland of the second part: Wit-

nesseth, that for and in consideration of the sum of one thousand and fifty dollars by the parties of the second part to him the said Thomas H. Massey party of the first part in hand paid, the receipt whereof is hereby acknowledged, the said Thomas H. Massey doth grant unto the said Jacob Tome, Robert A. Taylor, Joseph Jas. Taylor and John P. Gettings as to one undivided moiety thereof, and to said Mason L. Weems and Theodore Weems as to the other undivided moiety, their heirs and assigns in fee simple—parties hereto of the second part, with general and special warranty, all that part of his lot in Leedstown Westmoreland County Va. bounded and described as follows, to-wit: on the east by a lot belonging to John Spilman now occupied by Messrs. T. M. & R. B. Spilman, on the South by the Rappahannock river, on the west by Henry Taylor Esq's land, and on the north by the main county road running through Leedstown, it being the lower portion of the lot owned by sd. Massey at Leedstown containing ½ an acre more or less, together with
378 all the appurtenances thereunto belonging including the wharf, three warehouses and a black smith shop. The said Massey covenants that he has the right to convey the said land to the grantee: That he has done no act to encumber the said land; that the grantee shall have quiet possession of the said land free from all encumbrances: and that he the party of the first part will execute such further assurances of the said land as may be requisite. As witness the following signature and seal, the day and year first above written.

T. H. MASSEY. [SEAL.]

STATE OF MARYLAND,
City of Baltimore, To-wit:

I, William W. Latimer, a commissioner for the State of Virginia, aforesaid, in the State of Maryland, do certify that Thomas H. Massey, whose name is signed to the writing above bearing date on the twentieth day of December, 1869, has acknowledged the same before me in my City of Baltimore aforesaid. Given under my hand this twenty-fourth day of December, A. D., 1869.

[Seal of said Commissioner.]

W. W. LATIMER,
A Commissioner for Va. residing in Baltimore City, Md.

VIRGINIA:

Clerk's Office of Westmoreland County Court, Decr. 27th, 1869.

The foregoing deed of bargain and sale from Thomas H. Massey to Jacob Tome & *als.* conveying real estate was this day received in the Clerk's Office of said Court & with certificate of acknowledgement thereon endorsed admitted to record.

Teste: J. H. SISSON, *D. C.*

Recorded and examined.

Teste: J. H. SISSON, *D. C.*

A Copy—Teste: J. WARREN HUTT, *Clerk.*

379 PLAINTIFF'S EXHIBIT No. 75. Filed with Depositions and Returned with Special Master's Report.

This Deed made this tenth day of February in the year of our Lord Eighteen hundred and seventy-five between Jacob Tome of Cecil County and State of Maryland, Robert A. Taylor and Ann E. his wife, Joseph J. Taylor and Sidney A. his wife of Baltimore City and State of Maryland and John S. Gettings and Charlotte C. Gettings his wife of Baltimore County and State of Maryland of the first part, and Georgeanna Williams wife of Henry Williams, and Matilda S. Forbes wife of Sidney H. Forbes of Baltimore City and State of Maryland of the second part. Witnesseth, that in consideration of the sum of Five dollars the said parties of the first part have granted, bargained and sold, and by these presents do grant, bargain and sell to said parties hereto of the second part their heirs and assigns, one undivided moiety of that lot or parcel of ground in Leeds Town Westmoreland County Virginia, described and bounded as follows to-wit. Beginning for the same on the East by a lot belonging to John Spilman now occupied by Messrs. T. M. & R. B. Spilman, on the South by the Rappahannock River, on the West by Henry Taylor's land, and on the North by the main County road running through Leeds Town it being the lower portion of the lot owned by sd. Massey at Leeds Town containing one-half an acre more or less, (vide Deed Massey to Tome and others dated 20 December A. D. 1869 recorded land records of Westmoreland County. To have and to hold the said undivided Moiety of said parcel of land and all the right title and interest of said parties of the first part therein and thereto to the said parties of the second part their heirs and assigns forever, and that said parties of the first part do hereby covenant that they will specially warrant the said undivided moiety of said land to the said parties hereto of the second part their heirs and assigns and also that they will execute all such other and further assurances as may be deemed requisite. Witness their hands and seals.

J. TOME. [SEAL.]
ROBT A. TAYLOR. [SEAL.]
ANN E. TAYLOR. [SEAL.]
JOS. JAS. TAYLOR. [SEAL.]
SIDNEY A. TAYLOR. [SEAL.]
JOHN S. GETTINGS. [SEAL.]
C. C. GETTINGS [SEAL.]

Teste:
THOMAS MURDOCH.
GEO. SPILMAN.

380 STATE OF MARYLAND,
City of Baltimore, To-wit:

I, Thomas Murdoch a Notary Public in and for the City of Baltimore in the State of Maryland, do hereby certify that Jacob Tome, Joseph J. Taylor, Robert A. Taylor & John S. Gettings whose names are above signed to the above Deed bearing date on the Fifteenth

day of February A. D. Eighteen Hundred & seventy-five personally appeared before me in my City aforesaid and severally acknowledged the said writing to be their actual deed. Witness my hand and seal Notarial this 31st of March in the year Eighteen Hundred & seventy-five.

[SEAL.] THOMAS MURDOCH.

STATE OF MARYLAND,
City of Baltimore, To-wit:

I, Thomas Murdoch a Notary Public in and for the City of Baltimore in the State of Maryland do hereby certify that Ann E. Taylor, the wife of Robert A. Taylor, Sidney A. Taylor the wife of Joseph J. Taylor, and Charlotte C. Gettings the wife of John S. Gettings whose names are signed as above to the aforegoing deed bearing date the fifteenth day of February A. D. Eighteen hundred and seventy-five, personally appeared before me in my City aforesaid & being Examined by me privily and apart from their husbands, and having the writing aforesaid fully explained to them, they the said Ann, Sidney and Charlotte, Acknowledged the said writing to be their act and declared that they had willingly executed the same and do not wish to retract it. Witness my hand and seal Notarial this 31 day of March A. D. 1875.

THOMAS MURDOCH. [SEAL.]

VIRGINIA:

Clerk's Office of Westmoreland County Court, April 28th, 1875.

The foregoing deed of bargain and sale from J. Tome, Robert A. Taylor and Ann E. his wife and others to Georgeanna Williams and Matilda Forbes, conveying real estate, was this day received in my office and with certificates of acknowledgment and privy Examination thereon endorsed, admitted to record.

Teste: J. WARREN HUTT, *C. C.*

Recorded and Examined.
Teste: J. WARREN HUTT, *C. C.*

A Copy—Teste: J. WARREN HUTT, *Clerk.*

381 PLAINTIFF'S EXHIBIT No. 77. Filed with Depositions and Returned with Special Master's Report.

This Deed made this Fourteenth day of August in the year Eighteen Hundred and Eighty three by Gustavia Nihiser and W. M. Nihiser, her husband, of Hartmansville, Mineral County in the State of West Virginia, Rachael Weems of Baltimore City in the State of Maryland, and Peter W. Crain of said City and State, trustee, by virtue of a decree of the Circuit Court of Baltimore City dated the twenty-fourth day of October in the year Eighteen hundred and

seventy-four, and recorded in the Chancery Record of said Court in Liber J. R. B. No. 79 folio 192. Witnesseth, that for and in consideration of Fifteen Hundred Dollars, the said Gustavia Nihiser and W. M. Nihiser, Rachael Weems and Peter W. Crain, trustee, do grant and convey unto Georgeanna Williams wife of Henry Williams and Matilda S. Forbes wife of Sydney H. Forbes, all of Baltimore City aforesaid, in fee simple, all the right, title, interest and estate of the said Gustavia Nihiser, Rachael Weems and Peter W. Crain, trustee, in and to all those three several pieces or parcels of ground and improvements, together with all the privileges and easements appurtenant thereto, lying and being in the City of Fredericksburg, in the State of Virginia, and particularly described in a deed from Jacob Tome to Georgeanna Williams and Matilda S. Forbes, dated the tenth day of February, in the year eighteen hundred and seventy-five and recorded in the land Record of the Corporation Court of said City in Liber "K" folio 157. Also all the right, title, interest and estate of the said Gustavia Nihiser, Rachel Weems and Peter W. Crain, trustee, in and to all that piece or parcel of ground, and improvements, together with all the privileges and easements appurtenant thereto lying and being in the town of Port Royal in Caroline County, in the State of Virginia, and particularly described in a deed from Christopher Grammar, trustee and Champ B. Thornton and Elizabeth Thornton, his wife, to Jacob Tome, Robert Alexander Taylor, Joseph J. Taylor and John S. Gettings, dated the twenty-fifth day of April, in the year eighteen hundred and sixty-six, and with the plat of the survey thereof, duly recorded in the Clerk's office of Caroline County Court in Deed Book No. 52, folio 286, &c. Also all the right, title, interest and estate of the said Gustavia Nihiser, Rachael Weems, and Peter W. Crain, trustee, in and to all that piece or parcel of ground and improvements, together with all the privileges and easements, appurtenant thereto, lying and being
382 in Leedstown in Westmoreland County in the State of Virginia, and particularly described in a Deed from Thomas H. Massey to Jacob Tome, Robert A. Taylor, Joseph James Taylor, John S. Gettings, Mason L. Weems and Theodore Weems dated the twentieth day of December in the year eighteen hundred and sixty-nine and recorded in the Clerk's office of Westmoreland County Court on the twenty-seventh day of December, in the year eighteen hundred and sixty-nine. Also all the right, title and estate of the said Gustavia Nihiser, Rachael Weems, and Peter W. Crain, trustee, in and to all that piece or parcel of ground and improvements together with all the privileges and easements appurtenant thereto lying and being in Middlesex County in the State of Virginia, and particularly described in a deed from William H. Purkins, Commissioner to "The Baltimore and Susquehanna Steam Company," Mason L. Weems and Theodore Weems dated the twenty-fourth day of August, in the year eighteen hundred and seventy-one, and recorded in the Clerk's office of Middlesex County Court on the seventh day of November in the year eighteen hundred and seventy-one in Deed Book No. 24, folio 316. Also all the right, title, interest and estate of the said Gustavia Nihiser, Rachael Weems and Peter W. Cain, trustee,

in and to all that piece or parcel of ground and improvements, together with all the privileges and easements, appurtenant thereto, lying and being in Essex County in the State of Virginia, and particularly described in a Deed from Zebulon S. Farland and Ellen D. Farland, his wife, to Mason L. Weems, Jacob Tome, Robert Alexander Taylor, Joseph James Taylor and John S. Gettings dated the twenty-eighth day of May in the year eighteen hundred and sixty-seven, and recorded in the Clerk's office of Essex County the first day of June in the year eighteen hundred and sixty-seven. Also all the right, title, interest and estate of the said Gustavia Nihiser, Rachael Weems and Peter W. Crain, trustee, in and to all that piece or parcel of ground and improvements, together with all the privileges and easements appurtenant thereto, lying an- being in Richmond County in the State of Virginia, called and known as Mellow or Sharp's Wharf and particularly described in a deed from —— Clausen to —— —— and recorded in the Clerk's office of Richmond County Court. Also all other, the legal and equitable interest whatever the same may be or wherever situated, of the said Gustavia Nihiser, Rachael Weems and Peter M. Crain, trustee, in and to all wharf property lying and being in the afore-said counties, and contiguous to the Rappahannock river in the State of Virginia. To have and to hold the aforesaid parcels of ground and premises,
383 unto, and to the proper use and benefit of the said Georgeanna Williams and Matilda S. Forbes their heirs and assigns forever. Witness our hands and seals.

PETER W. CRAIN, *Trustee.* [SEAL.]
RACHAEL WEEMS. [SEAL.]
W. M. NIHISER, M. D. [SEAL.]
GUSTAVIA NIHISER. [SEAL.]

Teste:

GEO. M. SERPELL.
J. W. KEYS.
R. M. SWIFT.

STATE OF MARYLAND,
City of Baltimore, ss:

I, Philip H. Hoffman, a Commissioner of the State of Virginia, appointed by the Gove-nor thereof for the said State of Maryland, commissioned and qualified, residing in the City of Baltimore, do certify that Peter W. Crain, whose name is signed to the writing above bearing date on the 14th day of August the year eighteen hundred and eighty-three, has acknowledged the same before me in the City of Baltimore aforesaid. Given under my hand and official seal this 25th day of August, A. D. 1883.

[SEAL.] PH. H. HOFFMAN,
Commissioner for Virginia in Maryland.
Residing in Baltimore City.

STATE OF MARYLAND,
Garrett County, ss:

I, R. B. Jamison, a justice of the peace of the State of Maryland, in and for County of Garrett, do hereby certify that Rachael Weems, whose name is signed to the writing above bearing date on the fourteenth day of August in the year eighteen hundred and eighty-three, has personally appeared before me and acknowledged the same to be her act and deed. Given under my hand and seal this 22nd day of August, A. D., 1883.

R. B. JAMISON, *J. P.* [SEAL.]

384 STATE OF MARYLAND,
Garrett County, To-wit:

I, W. H. Tower, Clerk of the Circuit Court for Garrett County, do hereby certify that R. B. Jamison, Esquire, before whom the foregoing acknowledgement was made, and who has thereto subscribed his name, was at the time of so doing a justice of the peace in and for the County and State aforesaid, duly appointed, commissioned and qualified, and authorized by law to administer oaths and take acknowledgements.

In testimony whereof I hereto set my hand and affix the seal of the said Circuit Court for said Garrett County this 22nd day of August, A. D., 1883.

[SEAL.] W. H. TOWER, *Clerk.*

STATE OF WEST VIRGINIA,
Mineral County, ss:

I, R. W. Swift, a Notary Public of the State of West Virginia, appointed by the Gove-nor thereof for the said Mineral County commissioned and duly qualified, residing in said county, do certify that W. M. Nihiser, whose name is signed to the writing above, bearing date on the fourteenth day of August, in the year eighteen hundred and eighty-three, has acknowledged the same before me in the county aforesaid. And I also certify that Gustavia Nihiser, the wife of W. M. Nihiser, whose name is signed to the writing above bearing date the 14th day of August, A. D., 1883, personally appeared before me in my county aforesaid, and being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her she the said Gustavia Nihiser acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand and official seal at Keyser, Mineral County, this 14th day of August, A. D. 1883.

[SEAL.] R. W. SWIFT,
Notary Public in and for Mineral County.

385 VIRGINIA:

Clerk's Office of the Corporation Court of Fredericksburg, December 13th, 1885.

This deed was this day received in the office and with the certificates of its acknowledgement annexed, admitted to record at fifty minutes past eleven A. M.

Teste: J. F. FORBES,
Deputy Clerk, Corpt. Ct. Fred'sb'g, Va.

VIRGINIA:

In the Clerk's Office of Middlesex County Court, December 23rd, 1884.

This deed bearing date 14th Aug., 1883, was received for record, and is with the certificates of acknowledgement truly recorded. D. B. No. 28, page 309.

Teste: P. T. WOODWARD, *Clerk.*

VIRGINIA:

Essex County Court Clerk's Office, January 3rd, 1885.

This deed was this day presented to me, in my said office, and with the certificates thereto subjoined, admitted to record.

Teste: JAMES ROY MICON, *Clk.*

VIRGINIA:

Clerk's Office of the County Court of Richmond County, July 10th, 1885.

The foregoing deed dated Aug. 14th, 1883, together with all the certificates thereto annexed, was this day admitted to record in the office aforesaid.

Teste: L. D. WARNER, *Clerk.*

Rec'd in D. B. No. 33, pages 597 to 60 (inclusive) Rich'd Co. Ct.

386 VIRGINIA:

Clerk's Office of the County Court of Westmoreland County, July 18th, 1885.

The foregoing deed of bargain and sale from W. M. Nihiser and Gustavia Nihiser, his wife, Richard Weems and Peter W. Crain, trustee, to Georgeanna Williams and Matilda S. Forbes, conveying real estate, was this day received in my office and with the certificates annexed, admitted to record.

Teste: J. WARREN HUTT, *C. C.*

Examined July 18th, 1885.

Teste: M. L. HUTT, *D. C.*

A Copy—Teste: J. WARREN HUTT, *Clk.*

309

PLAINTIFF'S EXHIBIT No. 78. Filed with Depositions and Returned with Special Master's Report.

This Deed, Made this Fourth day of January, in the year eighteen hundred and ninety-two, by us, Georgeanna Williams and Henry Williams, her husband, Matilda S. Forbes and Sydney H. Forbes, her husband, and Henry Williams, Trustee of the Estate of Theodore Weems, deceased, all of the City of Baltimore, State of Maryland:

Witnesseth, That in consideration and fulfilment of a contract between us and the Weems Steamboat Company of Baltimore City, a corporation duly incorporated, and also of the sum of one dollar, to us in hand paid, the receipt of which is hereby avknowledged, we, the said Georgeanna Williams and Henry Williams, her husband, Matilda S. Forbes and Sydney H. Forbes, her husband, and Henry Williams, Trustee of the Estate of Theodore Weems, deceased, do grant unto the said The Weems Steamboat Company of Baltimore City, its successors and assigns all of our right, title, and interest, at law or in equity, jointly or severally, as owners, lessees or otherwise, in and so any and all of the lands and appurtenances, wharf land appurtenant to and used therewith, easements and privileges hereinafter mentioned or described, which wharf is generally known by the name, or situated at the place hereinafter mentioned, and is situated in the County of Westmoreland, in the State of Virginia, that is to say: Leedstown wharf.

Together with all of the lands and rights adjacent to or connected with the above mentioned wharf or landing which were con-
387 veyed to Joseph James Taylor and others by deed from T. H. Massey, dated the twentieth December, 1869.

Witness the following signatures and seals:

GEORGEANNA WILLIAMS. [SEAL.]
HENRY WILLIAMS. [SEAL.]
MATILDA S. FORBES. [SEAL.]
SYDNEY H. FORBES. [SEAL.]

Teste: WM. H. MASSON.

STATE OF MARYLAND,
City of Baltimore, To-wit:

I hereby certify that on this Fourth day of January, 1892, before me the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared Georgeanna Williams and Henry Williams, her husband, Matilda S. Forbes and Sydney H. Forbes, her husband, and Henry Williams, Trustee of the estate of Theodore Weems, deceased, and acknowledged the foregoing Deed to be the act and deed of each of them, respectively.

In testimony whereof, I have hereunto set my hand and affixed my Notarial Seal the day and year above written.

[SEAL.] WM. H. MASSON,
Notary Public.

VIRGINIA:

Clerk's Office of the County Court of Westmoreland County, January 6, 1892.

The foregoing deed of bargain and sale from Georgeanna Williams and Henry Williams, her husband, Matilda S. Forbes and Sydney H. Forbes, her husband, to the Weems Steamboat Company of Baltimore City, conveying real estate, was this day received in my office, and with the certificate of acknowledgement thereon endorsed, admitted to record as to them.

Teste: J. WARREN HUTT, *Clk.*

Examined January 6th, 1892.

Teste: J. WARREN HUTT, *Clk.*

A copy—Teste: J. WARREN HUTT, *Clerk.*

388 PLAINTIFF'S EXHIBIT No. 79. Filed with Depositions and Returned with Special Master's Report.

From the Records of Westmoreland *County Court Clerk's Office*, in the State of Virginia, made this 18th day of May, 1903, by M. L. Hutt, Att'y at Law.

(1) John R. Marchant
to
Thomas H. Massey.

In Deed Book No. 36, at page 466.

Deed of bargain and sale dated the 29th day of October, 1863, admitted to record the 29th day of October, 1863, conveys "a certain lot in the town of Leeds & containing three-fourths of an acre, more or less, and bounded on the East by the land of John Spilman, on the North & West by the land of Henry Taylor, & the South by the Rappahannock river; together with all & every the tenements, hereditaments, rights, privileges & immunities to the said lot of land belonging or in any wise appertaining."

(2) T. H. Massey
to
Jacob Tome, Robert A. Taylor, Joseph Jas. Taylor, John P. Gettings, Mason L. Weems, and Theodore Weems.

In D. B. No. 38, at page 258.

Deed of bargain and sale dated the 20th day of December, 1869, admitted to record on the 27th day of December, 1869, conveys "to said Jacob Tome, Robert A. Taylor, Joseph Jas. Taylor and John P.

Gettings as to one undivided moiety thereof; and to said Mason L. Weems and Theodore Weems as to the other undivided moiety their heirs and assigns in fee simple with general and special warranty all that part of his lot in Leedstown, Westmoreland County, Va., bounded and described as follows, to-wit: on the East by a lot belonging to John Spilman now occupied by Messrs. T. M. & R. B. Spilman, on the South by the Rappahannock river; on the West by Henry Taylor Eqr's land, and on the North by the main County road running through Leeds Town, it being the lower portion of the lot owned by sd. Massey at Leeds Town containing ½ an acre more or less: Together with all the appurtenances thereunto be-
389 longing including the wharf three warehouses and a black smith shop."

J. Tome, Rob't A. Taylor & Ann E. Taylor, his wife; Jos. Jas. Taylor and Sidney A. Taylor, his wife; John S. Gettings, and C. C. Gettings, his wife,
(3) to
Georgeanna Williams, wife of Henry Williams, and Matilda S. Forbes, wife of Sidney H. Forbes.

In D. B. No. 40, at page 155 *et seq.*

Deed of bargain & sale, dated the 10th day of Feb'y, 1875, admitted to record the 28th day of April, 1875, conveys with Special Warranty "one undivided moiety of that lot or parcel of ground in Leeds Town Westmoreland County Virginia, described and bounded as follows to wit: Beginning for the same on the East by a lot belonging to John Spilman now occupied by Messrs. T. M. & R. B. Spilman, on the South by the Rappahannock river, on the West by Henry Taylor's land, and on the North by the main County road running through Leeds Town it being the lower portion of the lot owned by sd. Massey at Leeds Town containing one half an acre more or less (Vide Deed Massey to Tome and others dated 20th December A. D. 1869 recorded in the land records of Westmoreland County. To have and to hold the said undivided moiety of said parcel of land and all the right, title and interest of said parties of the first part therein and thereto to the said parties of the second part, their heirs and assigns forever."

(4) Deed dated 14th day of August, 1883, admitted to record 18th day of July 1885, in Deed Book No. 45, at page 462 *et seq.* "by Gustavia Nihiser and W. M. Nihiser, her husband of Hartmansville Mineral County in the State of West Virginia; Rachael Weems of Baltimore City in the State of Maryland, and Peter W. Crain of said City and State, trustee, by virtue of a decree of the Circuit Court of Baltimore City dated the twenty-fourth day of October, in the year eighteen hundred and seventy-four and recorded in the Chancery record of said court in Liber J. R. B. No. 79, folio 192." * * * "the said Gustavia Nihiser and W. M. Nihiser, Rachael Weems and Peter W. Crain, trustee (together with other property conveyed omitted in this abstract do grant and convey unto the said

Georgeanna Williams wife of Henry Williams, and Matilda
390 S. Forbes wife of Sidney H. Forbes of Baltimore City aforesaid, in fee simple "all of the right, title and interest and estate of the said Gustavia Nihiser Rachael Weems and Peter W. Crain, trustee, in and to all that piece or parcel of ground and improvements, together with all the privileges and easements appurtenant thereto, lying and being in Leeds Town in Westmoreland County in the State of Virginia and particularly described in a deed from Thomas H. Massey to Jacob Tome, Robert H. Taylor Joseph James Taylor John S. Gettings, Mason L. Weems and Theodore Weems dated the twentieeth day of December in the year eighteen hundred and sixty nine and recorded in the Clerk's office of Westmoreland County Court on the twenty seventh day of December in the year eighteen hundred and sixty nine." * * *

Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sydney H. Forbes, her husband,
(5) to
The Weems Steamboat Company of Baltimore City.

In D. B. No. 50, at page 397 *et seq.*

Deed of bargain and sale dated the fourth day of January, 1892, admitted to record the 6th day of January, 1892, conveys "unto the said The Weems Steamboat Company of Baltimore City its successors and assigns, all of our right, title and interest, at law or in equity, jointly or severally, as owners lessees, or otherwise in and to any and all of the lands and appurtenances, wharf, land appurtenant to and used therewith, easements and privileges hereinafter mentioned or described, which wharf is generally known by the name, or situated at the place hereinafter mentioned, and is situated in the County of Westmoreland in the State of Virginia, that is to say: Leeds Town wharf, together with all of the lands and rights adjacent to or connected with the above mentioned wharf or landing, which were conveyed to Joseph James Taylor and others by deed from T. H. Massey dated the twentieth December 1869."

NOTE.—I find that Henry Williams trustee of the estate of Theodore Weems is named as one of the parties of the first part, in this deed, but did not sign and acknowledge same.

Given under my hand this 18th day of May, 1903.

M. L. HUTT,
Att'y at Law.

Montross, Va.

391 PLAINTIFF'S EXHIBIT NO. 80. Filed with Depositions and Returned with Special Master's Report.

This deed made this 29th day of May 1858 between A. H. Jones of the one part and H. W. Daingerfield of the other part, Witnesseth: that the said A. H. Jones for and in consideration of the sum of fifteen hundred dollars in hand paid by the said Daingerfield the re-

ceipt whereof is hereby acknowledged doth grant, bargain and sell and convey unto the said Daingerfield all right, title and interest into that property known as the Tappahannock wharf together with the abutment and land attached, being the same property conveyed to the said Jones by the Maryland and Virginia Steam Packet Company by deed of record in the clerk's office of Essex County Court together with all the privileges and appurtenances to the same in anywise appertaining or belonging. The said Jones covenants with the said Daingerfield that the title to the said property he will and his heirs and executors and administrators shall forever warrant and defend against the claim of all persons claiming under him. In testimony whereof the said Jones has hereunto set his hand and affixed his seal the day first above written. "Claiming under him, in the 3rd line from bottom interlined before signed."

AUB. H. JONES. [SEAL.]

Essex County Court, Clerk's Office, May 28th, 1858.

This deed was this day produced to me in my said office and acknowledged by Aubrey H. Jones to be his act and deed and admitted to record.

Teste: H. SOUTHWORTH, *Clerk.*

PLAINTIFF'S EXHIBIT No. 81. Filed with Depositions and Returned with Special Master's Report.

This deed made this 29th day of May 1858 between Henry W. Daingerfield of the first part and James M. Matthews of the second part and Aubrey H. Jones of the third part. Witnesseth: that whereas the said Daingerfield has purchased of the said Jones the property in and adjoining the town of Tappahannock known as the Tappahannock wharf and its appurtenances for the sum of fifteen hundred dollars and in the agreement between the said parties it was stipulated that the said Daingerfield should pay a bond of the said Jones executed to Z. S. Farland and assigned by sd.
392 Farland to H. W. Latane which said bond bears date the 1st Jan'y 1857 for the sum of one thousand dollars and in accordance with said stipulation the said Daingerfield has paid the sum of three hundred and ten dollars, which has been credited on the said bond and whereas it is now agreed between the said parties that the said Daingerfield shall execute his note for the balance of the said $1,000.00 to sd. Jones to be secured by a lien on the following real estate. Now this indenture Witnesseth: that for and in consideration of the premises and for the further consideration of five dollars in hand paid by the said Matthews to the said Daingerfield the receipt whereof is hereby acknowledged he the said H. W. Dangerfield doth grant, bargain, sell and convey unto the said James M. Matthews the following property to wit: the wharf at Tappahannock known as the Tappahannock wharf this day conveyed to the sd. Daingerfield by the said A. H. Jones with all the privileges and appurtenances, abutments and piece of land belonging, and also the

office situated on the public square in the town of Tappahannock now occupied by said Daingerfield being the same conveyed to him by Adolphus Herbertz. In trust to secure the payment of the said sum of one thousand dollars due 1st Jan'y 1857 by bond subject to the credit of sixty dollars the interest for 1857 and the further sum of two hundred & fifty dollars paid on the 17th day of May 1858 due by bond from said Henry W. Daingerfield to said Aubrey H. Jones. It is covenated and agreed between the said parties that whenever the said Henry W. Latane shall demand of the said Jones the amount of the bond which he holds of the said Jones and the amount herein secured shall not have been paid by the said Daingerfield then the said Jones giving to the trustee herein notice in writing the said trustee shall proceed to close this deed of trust after having given thirty days' notice of the time and place of sale *do* proceed to sell the herein granted property or so much thereof as may be necessary to pay the amount due on the said bond principal and interest. It is agreed between the said parties that at any time the office or wharf may be sold at the election of the said Daingerfield provided the proceeds of sale be applied by the trustee to the credit of the said bond herein secured.

Witness the following signatures and seals.

H. W. DAINGERFIELD. [SEAL.]
AUB. H. JONES. [SEAL.]

393 Essex County Court, Clerk's Office, May 29th, 1858.

This deed of trust was this day acknowledged before me in my said office by Henry W. Daingerfield and Aubrey H. Jones two of the parties who have signed the same to be their act and deed and admitted to record as to them.

Teste: JAMES ROY, MICOU, *Clk.*

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

PLAINTIFF'S EXHIBIT No. 82. Filed with Depositions and Returned with Special Master's Report.

This deed made and entered into this 22nd day of June 1866 between H. W. Daingerfield and Courtney T., his wife, of the one part and Zebulon S. Farland of the other part, all of Essex County Virginia, Witnesseth: that in consideration of the sum of one thousand dollars paid to the said Daingerfield by the said Farland at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, the said Daingerfield and wife do grant, sell & convey unto the said Farland one half of the property known as the "Tappahannock wharf" property lying and being in said town consisting of the wharf now in course of being built, the abutment with the land thereto attached and all appurtenances rights of way &c. thereto belonging, being the same property conveyed by A. H. Jones to said Daingerfield by deed recorded in the clerk's office of

Essex County Court on the 28th day of May 1858. And the said Daingerfield & wife covenant with the said Farland that they have the right to sell & convey the said property & that they will warrant the same generally.

Witness the following signatures and seals.

H. W. DAINGERFIELD. [SEAL.]
COURTENAY T. DAINGERFIELD. [SEAL.]

ESSEX COUNTY, *To-wit:*

I, Thos. W. Lewis, a justice of the peace for the County of Essex in the State of Virginia, do certify that H. W. Daingerfield, whose name is signed to the writing on the opposite page bearing date on the 22nd day of June 1866 has acknowledged the same before me in my county aforesaid.

Given under my hand this 22nd day of June, 1866.

THOS. W. LEWIS, *J. P.*

394 STATE OF VIRGINIA,
Essex County, To-wit:

I, B. G. Rennolds, a justice of the peace for the County of Essex in the State of Virginia do certify that Courtney T. Daingerfield the wife of H. W. Daingerfield, whose names are signed to the writing on the opposite page bearing date on the 22nd day of June, 1866, personally appeared before me in my county aforesaid and being examined by me privily and apart from her husband & having the writing aforesaid fully explained to her; she, the said Courtney T. Daingerfield, acknowledged the said writing to be her act and declared she had willingly executed the same & does not wish to retract it.

Given under my hand this 22 day of June, 1866.

B. G. RENNOLDS, *J. P.*

Essex County Court, Clerk's Office, September 22nd, 1866.

This deed was this day produced to me in my said office and with the justice's certificates annexed, admitted to record.

Teste: JAMES ROY MICOU, *Clk.*

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

PLAINTIFF'S EXHIBIT No. 83. Filed with Depositions and Returned with Special Master's Report.

This deed made this 28th day of May in the year 1867 between Zebulon S. Farland and Ellen D. Farland his wife of the town of Tappahannock in the County of Essex in the State of Virginia of the one part and Mason L. Weems, Jacob Tome, Robert Alexander Taylor, Joseph Jas. Taylor and John S. Gettings of the City of Baltimore and State of Maryland of the other part, Witnesseth: that the

said Farland and wife for and in consideration of the sum of one thousand and five hundred dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained and sold and do by these presents grant, bargain and sell unto the said Mason L. Weems, Jacob Tome, Robt. A. Taylor, Joseph J. Taylor and John S. Gettings their heirs and assigns one undivided half of that certain well known lot or parcel of land on the Rappahannock river, at or near the said Town of Tappahannock in said county on which is situated and erected the wharf usually known and called "The Tappahannock Wharf" together with the abutments of the said
395 wharf and all the land known and used as a part of the said wharf property, all the right- of ways thereto and all the rights privileges and appurtenances to the said land and wharf in anywise appertaining, belonging, known used or enjoyed as a part thereof, being the same undivided half of the aforesaid land and wharf, purchased by the said Z. S. Farland of Henry W. Daingerfield and conveyed by said Daingerfield and Courtney T. Daingerfield his wife to said Z. S. Farland by deed recorded in the clerk's office of said Essex County Court on the 22nd day of Sept. 1866. To have and to hold to the said parties of the second part, their heirs and assigns forever the said undivided one half of the land and wharf hereby sold and conveyed in the proportions to wit: to the said Mason L. Weems his heirs and assigns one undivided half thereof and of the remaining half the said Jacob Tome his heirs and assigns one hundred and seventeen four hundredths thereof, the said Robt. A. Taylor his heirs and assigns one hundred and seventeen four hundredths thereof, the said Joseph Jas. Taylor his heirs and assigns one hundred and sixteen four hundredths thereof, and the said John S. Gettings his heirs and assigns fifty four hundredths thereof, and the said Z. S. Farland and Ella D. Farland his wife do hereby covenant to and with the said Mason L. Weems, Jacob Tome, Robt. A. Taylor, Joseph Jas. Taylor and John S. Gettings their heirs and assigns, that they the said Farland and wife are seised possessed and invested with a perfect and complete title in and to the said property hereby conveyed in fee simple and that they have perfect and complete right to sell and convey a good and unincumbered right and title thereto and that they will and that their heirs, executors and administrators shall forever warrant and defend the same against the claim or claims of all and every person or persons whatsoever.

Witness the following signatures and seals.

Z. S. FARLAND. [SEAL.]
ELLEN D. FARLAND. [SEAL.]

STATE OF VIRGINIA,
County of Essex, To-wit:

I, James M. Matthews, a notary public in and for the county aforesaid in the State aforesaid, do hereby certify that Zebulon S. Farland, whose name is signed to the foregoing and hereto annexed writing bearing date the 28th day of May, 1867, acknowledged the

same to be his act and deed before me in my said county. Given under my hand this 28th day of May, 1867.

JAMES M. MATTHEWS, *N. P*

396 STATE OF VIRGINIA,
County of Essex, To-wit:

We, Muscoe Garnett and James M. Matthews, notaries public in and for the county aforesaid in the State aforesaid, do hereby certify that Ellen D. Farland the wife — Z. S. Farland, whose names are signed to the foregoing and hereto annexed writing bearing date the 28th day of May, 1867, personally appeared before us in our said county and being examined by us privily and apart from her said husband and having the writing aforesaid fully explained to her, she, the said Ellen D. Farland, acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under our hands this 28th day of May, 1867.

MUSCOE GARNETT, *N. P.*
JAMES M. MATTHEWS, *N. P.*

Essex County Court, Clerk's Office, June 1st, 1867.

his deed duly stamped was this day produced to me in my said office and with the notaries public's certificates annexed admitted to record.

Teste: JAMES ROY MICOU, *Clk.*

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

PLAINTIFF'S EXHIBIT No. 84. Filed with Depositions and Returned with Special Master's Report.

This deed made this 24th day of July 1869 between James M. Matthews trustee in the deed of trust hereinafter mentioned of the one part and Mason L. Weems, Jacob Tome, Robert A. Taylor, Joseph James Taylor and John S. Gettings of the City of Baltimore and State of Maryland of the other part. Whereas Henry W. Daingerfield by his certain deed of trust under — May 29th 1858 between the said Daingerfield of the one part, the said Matthews of the second part and Aubrey H. Jones of the third part, conveyed to the said Matthews the wharf at Tappahannock, known as the Tappahannock wharf and the appurtenances thereto including the abutments and piece of land thereto belonging also the office situated on the public square in the said Town of Tappahannock, then occupied by the said Daingerfield; in trust to secure the payment to the
397 said Jones of the sum of one thousand dollars due by bond executed by the said Daingerfield to the said Jones, on 1st Jan'y 1857 subject to the credits of sixty dollars, the interest for 1857 and two hundred and fifty dollars paid May 17th, 1858. And

whereas the said Daingerfield being in default in paying the said bond and interest or the balance due thereon after allowing all proper credits, the said Matthews trustee as aforesaid was on the 21st June 1869 duly required by notice in writing from Robert A. Taylor agent for the parties of the second part to this deed and assignee of the said bond to make sale of the trust property according to the terms of the said trust deed. And whereas the said Matthews trustee as aforesaid did accordingly, in pursuance of the said deed advertise the said Daingerfield's interest in the said wharf for sale (which interest was only one moiety thereof the other moiety having been previously sold and conveyed by said Daingerfield to Zebulon S. Farland dec'd and by said Farland and wife to the parties of the second part to this deed, as will appear by the several deeds therefor of record in the clerk's office of Essex County Court) and the said interest was, on the 23rd of July 1869 at public auction in the said town of Tappahannock knocked off to the said Robert A. Taylor agent as aforesaid at the sum of five hundred dollars, that being the highest bid for the same. And whereas the said Robert A. Taylor agent as aforesaid having paid to the said Matthews trustee as aforesaid the sum of $29 the commissions and expenses incident to the sale and credited the bond of the said Daingerfield to the said Jones assigned as aforesaid, by the sum of four hundred and seventy one dollars, the residue of the purchase money, the said Robert A. Taylor agent as aforesaid has requested the said Matthews trustee as aforesaid to make and execute to the parties of the second part in the proportions hereinafter mentioned a good and sufficient deed for the said Daingerfield's moiety of the said wharf and appurtenances and piece of land aforesaid. Now therefore this deed, Witnesseth: that the said Matthews trustee as aforesaid, for and in consideration of the premises doth grant unto the said parties of the second part *part* the said Daingerfield's moiety or undivided one half of the land and wharf at Tappahannock County of Essex and State of Virginia sold and purchased as before stated in the following proportions to wit: to the said Mason L. Weems his heirs and assigns one undivided half thereof and of the remaining half thereof to the said Jacob Tome his heirs and assigns one hundred and seventeen four hundre-ths thereof, the said Robert A. Taylor his heirs and assigns one hundred and seventeen four hundre-ths thereof the said Joseph James Taylor his heirs and assigns one hundred and sixteen four hundre-ths thereof and the said John S. Gettings
398 his heirs and assigns fifty four hundre-ths thereof. And the said Matthews trustee as aforesaid doth hereby covenant with the parties of the second part that he will warrant to them specially the property hereby conveyed.

Witness the following signature and seal.

JAMES M. MATTHEWS. [SEAL.]

The words "at public auction in the said town of Tappahannock" interlined on 2nd page before signed (In the original deed).

Essex County Court, Clerk's Office, August 24th, 1869.

This deed was this day produced to me in the said office duly stamped with a United States Revenue Stamp of the value of fifty cents which is cancelled and acknowledged by James M. Matthews to be his act and deed and admitted to record.

Teste: JAMES ROY MICOU, *Clk.*

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

PLAINTIFF'S EXHIBIT No. 85. Filed with Depositions and Returned with Special Master's Report.

This deed made this fifteenth day of February in the year of our Lord one thousand and eight hundred and seventy five between Jacob Tome of Cecil County and State of Maryland, Robert Alexander Taylor and Anne E. Taylor his wife, Joseph James Taylor and Sidney A. Taylor his wife, both of Baltimore City and State aforesaid and John S. Gettings and Charlotte C. Gettings his wife of Baltimore County and State aforesaid of the first part and Georgeanna Williams wife of Henry Williams and Matilda S. Forbes wife of Sidney H. Forbes of Baltimore City and State of Maryland of the other part. Witnesseth: that in consideration of the sum of five dollars to the parties of the first — paid, the receipt whereof is hereby acknowledged, said parties of the first part do grant, bargain, sell and convey unto said Georgeanna Williams and Matilda S. Forbes, their heirs and assigns as tenants in common all their right, title and interest in and to a parcel of ground in Essex County, State of Virginia, on the Rappahannock river at or near the village or Town of Tappahannock in said County upon which is situated and erected the wharf usually known and called The Tappahannock Wharf" together with the abutments of said wharf and all
399 the land known and used as the wharf property, all the rights of ways thereto and all privileges and appurtenances to said land and wharf appertaining, which said parties of the first part acquired by a deed from Farland and wife to them and others of record in Essex County Clerk's Office on or about the 1st of June 1867. To have and to hold the said land and premises to the said parties of the second part their heirs and assigns as tenants in common. And the said parties of the first part covenant that they will make and execute such other and further assurances as may be required for the confirmation hereof.

In witness whereof they have hereunto set their hands and seals

J. TOME. [SEAL.]
ROBT. A. TAYLOR. [SEAL.]
ANN E. TAYLOR. [SEAL.]
JOS. JAS. TAYLOR. [SEAL.]
SIDNEY A. TAYLOR. [SEAL.]
JOHN S. GETTINGS. [SEAL.]
C. C. GETTINGS. [SEAL.]

STATE OF MARYLAND,
City of Baltimore, To-wit:

I, Thomas Murdoch a Notary Public in and for the City of Baltimore in the State of Maryland, do hereby — that Jacob Tome, Joseph J. Taylor, Robert A. Taylor & John S. Gettings whose names are above signed to the above Deed bearing date on the Fifteenth day of February A. D. Eighteen Hundred & seventy-five personally appeared before me in my City aforesaid and severally acknowledged the said writing to be their actual deed. Witness my hand and seal Notarial this 31st of March in the year A. D. eighteen hundred and seventy-five.

[SEAL.] THOMAS MURDOCH.

400 STATE OF MARYLAND,
City of Baltimore, To-wit:

I, Thomas Murdoch a Notary Public in and for the City of Baltimore in the State of Maryland do hereby certify that Ann E. Taylor, the wife of Robert A. Taylor, Sidney A. Taylor the wife of Joseph J. Taylor, and Charlotte C. Gettings the wife of John S. Gettings whose names are signed as above to the aforegoing deed bearing date the fifteenth day of February A. D. Eighteen hundred and seventy-five, personally appeared before me in my City of Baltimore and being examined by me privily and apart from their husbands, and having the writing aforesaid fully explained to them, they the said Ann, Sidney and Charlotte acknowledged the said writing to be their act and declared that they had willingly executed the same and do not wish to retract it. Witness my hand and seal Notarial this 31 day of March A. D. 1875.

THOMAS MURDOCH. [SEAL.]

State of Virginia, Essex County Clerk's Office.

APRIL 22ND, 1875.

This deed was this day produced to me in my said office and with the certificate of a notary public of Maryland admitted to record.

Teste: JAMES ROY MICOU, *Clk.*

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

401 PLAINTIFF'S EXHIBIT No. 86. Filed with Depositions and Returned with Special Master's Report.

This Deed, Made this fourth day of January, in the year eighteen hundred and nine'-two, by us, Georgeanna Williams and Henry Williams, her husband, and Maltilda S. Forbes and Sydney H. Forbes, her husband, all of the City of Baltimore, State of Maryland. Witnesseth, That in consideration and fulfillment of a contract between us and The Weems Steamboat Company, of Baltimore City,

a corporation duly incorporated, and also of one dollar, to us in hand paid, the receipt of which is hereby acknowledged, we, the said Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sydney H. Forbes, her husband, do grant unto the said The Weems Steamboat Company, of Baltimore City, its successors and assigns, all, of our right, title and interest, at law or in equity, jointly or severally, as owners, lessees or otherwise, in and to the wharf which is generally known as Tappahannock Wharf, and is situated in the County of Essex, in the State of Virginia, and all of the lands appurte-nt to and used therewith, and the easement and privileges thereto appertaining.

Witness the following signatures and seals.

GEORGEANNA WILLIAMS. [SEAL.]
HENRY WILLIAMS. [SEAL.]
MATILDA S. FORBES. [SEAL.]
SIDNEY H. FORBES. [SEAL.]

Test:
WM. H. MASSON.

STATE OF MARYLAND,
City of Baltimore, To-wit:

I hereby certify that on this Fourth day of January, 1892, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Georgeanna Williams and Henry Williams, her husband, and Matilda S. Forbes and Sydney H. Forbes, her husband, and acknowledged the foregoing deed to be the act and deed of each of them respectively.

In testimony whereof, I have hereunto set my hand and affixed my Notarial Seal the day and year above written.

[SEAL.] WM. H. MASSON,
Notary Public.

402 VIRGINIA:

In Essex County Court, Clerk's Office, January 5, 1892.

This deed was presented, and with the certificate annexed, admitted to record at 5 o'clock P. M.

Teste: H. SOUTHWORTH, *Clerk.*

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

PLAINTIFF'S EXHIBIT No. 87. Filed with Depositions and Returned with Special Master's Report.

This deed, made and entered into this the 10th day of October, 1895, between R. E. Wynn and Fannie B. Wynn (his wife), parties of the first part, of the County of Essex, State of Virginia, and "The Weems Steamboat Company," of the City of Baltimore, State of

Maryland, party of the second part, and Wm. R. Aylett, of the County of King William, State of Virginia, party of the third part.

Witnesseth, That whereas the said R. E. Wynn and Fannie B. Wynn, have this day bargained and sold unto the said "Weems Steamboat Company," the following tract or parcel of land situated in the town of Tappahannock, Essex County, Virginia, and lying on the Rappahannock River, and bounded as follows: By a line starting from an iron pipe set in the ground to mark the corner, said pipe being one chain and sixty-five links N. 48 3-9 E. from the North East corner of the Dwelling house of R. E. Wynn, and running out into the river from said pipe on a course N. 62 E. and from said pipe N. 1 ¾ E. one chain and sixty-eight links to a corner of line between Wynn's lot and the lot Mrs. Margaret Latane, thence N. 62 E. out into the river, and the East Side of said lot of land is bound by the line of the water in the Rappahannock River, between the points where said two courses running N. 62 E. intersect the line of low water, and containing a little more than one fourth of an acre; And whereas Wm. R. Aylett has a lien on said land by virtue of a deed of trust executed by R. E. Wynn and Fannie B. Wynn to Phillip Aylett to secure the payment of a bond for $600— due Wm. R. Aylett, said deed bearing date the 19th day of June, 1893, and being of record in the clerk's office of Essex County Court Deed Book 57, page 134. Now, then, therefore, this deed witnesseth: That the said R. E. Wynn and Fannie B. Wynn for and in consideration of the sum of $300, to them in hand paid, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the said Weems Steamboat Company the tract of land above described, with general warranty of title, and the said Wm. R. Aylett doth
403 hereby release his lien to so much of said land as is hereby conveyed. A right of way over the land of the said R. E. Wynn, and Fannie B. Wynn from the land hereby conveyed to Prince Street is hereby granted, and the parties of the first part reserve a right of way across the above mentioned tract of land to the present wharf, or to such other wharf as may be built thereon, and is it further understood that the party of the second part is to bear one-half of the expense of keeping up the line fence between them.

In testimony whereof, Witness the following signatures and seals this the 10th day of October, 1895.

R. E. WYNN. [SEAL.]
FANNIE B. WYNN. [SEAL.]
WM. R. AYLETT. [SEAL.]

VIRGINIA, *Essex County, To-wit:*

This day, Personally appeared before me, Thomas E. Blakey, a Notary Public, in and for the County of Essex, State of Virginia, in my county aforesaid, R. E. Wynn and Fannie B. Wynn, whose names are signed to the foregoing writing, bearing date the 10th day of October, 1895, and acknowledged the same to be their act and deed.

Given under my hand this 14th day of October, 1895.

THOMAS E. BLAKEY, *N. P.*

The right of way reserved to Fannie B. Wynn and R. E. Wynn on lines 13, 14, 15, and 16 of the second page of the above deed is hereby relinquished by the said R. E. Wynn and Fannie B. Wynn.

In testimony whereof, Witness the following signatures and seals this the 26th day of October, 1895.

R. E. WYNN. [SEAL.]
FANNIE B. WYNN. [SEAL.]

STATE OF VIRGINIA,
County of Essex, To-wit:

I, H. Southworth, Clerk of the County Court of Essex County, in the State of Virginia, do certify that R. E. Wynn and Fannie B. Wynn, his wife, whose names are signed to the writing above, bearing date on the 26th day of October, 1895, have acknowledged the same before me in my county aforesaid.

Given under my hand this 26th day of October, 1895.

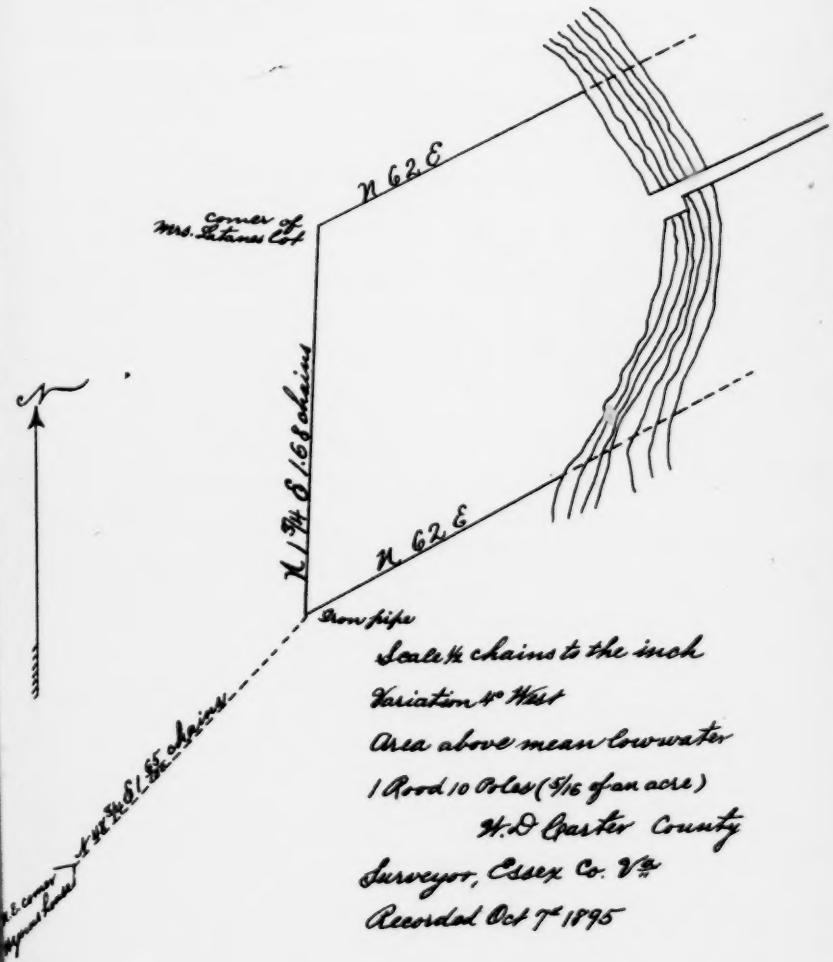
H. SOUTHWORTH, *Clerk.*

Plat of lot on River at Tappahannock sold by Wynn and wife to Weems Steamboat Company.

(Here follows diagram marked p. 403.)

403

No 181
Wellsley. } p. 423
v.
Peoples Leo.



Scale 4 chains to the inch
Variation 4° West
Area above mean Low water
1 Rood 10 Poles (9/16 of an acre)
W. D Carter County
Surveyor, Essex Co. Va.
Recorded Oct 7th 1895

Traced by C. J. Roeller Jan. 31-'96.

538

404 VIRGINIA:

In Essex County Court, Clerk's Office, January 3, 1896.

This deed was presented, and with the certificate annexed, and plat, admitted to record at 9 o'clock A. M.

Teste: H. SOUTHWORTH, *Clerk.*

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

PLAINTIFF'S EXHIBIT NO. 88. Filed with Depositions and Returned with Special Master's Report.

This deed made and entered into this 13 day of April 1889 between Robert E. Wynn of the first part Fanny B. Wynn the wife of Robert E. Wynn of the second part all of Tappahannock, Essex County, Virginia. Whereas the said Fanny B. Wynn was seized and possessed of certain real estate to wit: the farm called Mount Lauding in Essex County conveyed to her by Winter M. Dunn by deed bearing date the 3rd Dec. 1869 in consideration of the sum of sixteen hundred dollars paid by John A. Parker the father—said Fanny B. Wynn and also the house and lot in Tappahannock conveyed to her by her husband R. E. Wynn by deed bearing date — day of January 1872 and recorded on the 6th February 1872 subject to a deed of trust executed to H. R. Pollard trustee by said R. E. Wynn and wife, and whereas the said H. R. Pollard trustee did on the 17th day of January 1881 make sale of the said recited real estate to pay the debt of the said R. E. Wynn and the said Tappahannock property the house and lot were purchased by the said R. E. Wynn for his said wife Fanny B. but the deed was inadvertently made to him the said R. E. Wynn, which said error the said R. E. Wynn desires now to correct in order that the said property shall appear as was designated on the land books of this county in the name of the said Fanny B. Wynn, the said Fanny B. Wynn's property having thus been taken to pay the debt of her said husband he the said R. E. Wynn has agreed with and now doth fully release unto her all right, title and interest he has in the remaining portion of the said property of his said wife to wit: the house and lot in Tappahannock subject only to the deed of trust to H. R. Pollard trustee now in force to secure the payment of the debt to P. T. Woodward trustee of twelve hundred dollars bearing date the 15th day of August 1881 and recorded in the Clerk's office of Essex County on the 18th day of August 1881 or the balance due at this date thereon.

405 Now this deed. Witnesseth: that for and in consideration of the premises and the further consideration of the sum of five dollars in hand paid by the said Fanny B. Wynn to the said R. E. Wynn the receipt whereof is hereby acknowledged, he the said R. E. Wynn the party of the first part *do* grant, bargain, sell and convey, release and confirm unto the said Fanny B. Wynn the party of the second part all right title and interest of him the said party of the first part in and to the houses and lot in the town of Tappa-

hannock, Virginia on which the said Wynn and wife reside, subject to the deed of trust to H. R. Pollard bearing date 15th August 1881, to have and to hold the said interest in and to said houses and lots to her the said Fanny B. Wynn in all respects as if she were a *femme sole,* to be in no way liable for any debt of her said husband, to be disposed of by her by deed or will.

Witness the following signature and seal.

R. E. WYNN. [SEAL.]

STATE OF VIRGINIA,
County of Essex, To-wit:

I, Harrison Southworth Clerk of the County Court for the county aforesaid in the State of Virginia do certify that R. E. Wynn, whose name is signed to the writing hereto annexed bearing date on the 13 day of April 1889 has acknowledged the same before me in my county aforesaid.

Given under my hand this 13 day of April, 1898.

H. SOUTHWORTH, *Clerk.*

VIRGINIA:

In Essex County Court Clerk's Office, May 11th, 1889.

This deed was presented and with the certificate annexed, admitted to record at 9 o'clock A. M.

Teste: H. SOUTHWORTH, *C. C.*

A Copy—Teste: H. SOUTHWORTH, *C. C.*

406 PLAINTIFF'S EXHIBIT No. 89. Filed with Depositions and Returned with Special Master's Report.

Whereas by a deed bearing date on the 1st day of January 1872 of record in the Clerk's office of the county court for Essex County R. E. Wynn and Fannie B. his wife conveyed to H. R. Pollard trustee the houses and lots belonging to the said R. E. Wynn situated in the Town of Tappahannock County of Essex, State of Virginia in trust to secure a bond executed by John A. Parker and R. E. Wynn to George W. Smith trustee for George, Harriett, Robert, Thomas, James, Shepherd Chowning for the sum of fourteen hundred dollars, and whereas the said George W. Smith departed this life sometime in the year 1872 and whereas the said P. T. Woodward was by a decree of the Circuit Court of Middlesex county appointed trustee in his room and stead and whereas the said John A. Parker and R. E. Wynn failed to pay the said bond when required so to do and whereas a sale of said houses and lots were required by said P. T. Woodward trustee and whereas at such sale made by H. R. Pollard trustee at public auction after due advertisement on the 17th day of January 1881 the said R. E. Wynn became the purchaser for the sum of sixteen hundred and thirty nine dollars and fifty cents ($1,639.50)

and whereas the said Wynn has paid the sum of four hundred and thirty nine dollars and fifty cents of the purchase money and has agreed to secure the sum of twelve hundred dollars the balance of the purchase money. Now therefore this deed made this 15th day of August in the year 1881 between H. R. Pollard trustee as aforesaid of the first part and R. E. Wynn of the second part. Witnesseth: that in consideration of the premises and the said sum of sixteen hundred and thirty-nine dollars and fifty cents paid or secured to be paid as aforesaid, the said H. R. Pollard trustee as aforesaid doth grant and convey unto the said R. E. Wynn the said houses and lots situated in the Town of Tappahannock. To have and to hold the said property and all of the appurtenances thereto belonging unto the said R. E. Wynn his heirs and assigns forever. And the said H. R. Pollard doth warrant specially the title to the property hereby conveyed.

Witness the following signatures and seals.

H. R. POLLARD, *Trustee.* [SEAL.]

407 Essex County Court, Clerk's Office, 8 o'clock a. m.

AUGUST 18TH, 1881.

This deed was this day produced to me in my said office and acknowledged by H. R. Pollard trustee to be his act and deed and admitted to record.

Teste: JAMES ROY MICOU, *Clk.*

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

PLAINTIFF'S EXHIBIT No. 90. Filed with Depositions and Returned with Special Master's Report.

This deed made this 1st day of January in the year 1872, between R. E. Wynn and Fanny B. Wynn his wife of the first part and H. R. Pollard of the second part. Witnesseth: that the said R. E. Wynn and Fanny B. his wife do grant unto the said H. R. Pollard the following property to wit: a certain piece or parcel of land in the county of Essex, State of Virginia, containing two hundred and ninety seven acres, known as a part of the Mount Landing Farm, which is bounded on the North by the Mount Landing Creek and on the South by the road leading from Tappahannock to Loyds and adjoins the lands of J. J. Gouldman and others and the houses and lots belonging to the said R. E. Wynn, situated in the town of Tappahannock County of Essex, State of Virginia, and are the same houses and lots conveyed to the said R. E. Wynn by John A. Parker by deed bearing date on the 16th day of March 1867 and of record in the Clerk's office of the County Court of Essex County. In trust nevertheless, to secure a bond this day executed by John A. Parker and R. E. Wynn to George W. Smith trustee for George Harriett Robert, Thomas J., and Shepherd Chowning, for the sum of fourteen hundred dollars, payable on the first day of January 1877 with

interest at the rate of 12 per cent. per annum, the interest to be paid semi-annually on the 1st day of July and January of each year. Now if the said John A. Parker shall fail to pay any one of the instalments of interest or any part thereof as they shall respectively fall due, then the said George W. Smith trustee as aforesaid or his assignee may direct the said H. R. Pollard trustee, to sell the whole or any part of the property hereby conveyed, to pay such interest as may be in arrear- or the whole debt, if the said Smith or his assignee shall demand the same, or if the said Parker shall when the said bond shall fall due, fail to pay the same then the said prop-
408 erty or so much thereof as may be necessary shall be sold by the said Pollard on the request of said Smith but provided that in either case of sale the Mount Landing property shall first be sold, and that the said H. R. Pollard shall give at least fifteen days notice of a sale of any of the property hereby conveyed and out of the proceeds of said sale after paying the expenses of same pay over to the said George W. Smith trustee as aforesaid or his assigns the amount that may be due on said bond and the balance if any, to the said R. E. Wynn. And the said R. E. Wynn and Fanny B. his wife do covenant to and with the said H. R. Pollard that they have done no act or thing to *impar* the title to the property hereby conveyed and that they will warrant generally the title to the same.

Witness the following signatures and seals.

ROBT. E. WYNN. [SEAL.]
FANNIE B. WYNN. [SEAL.]

COUNTY OF DINWIDDIE, *To-wit:*

I, John Y. Harris, a notary public for the county aforesaid, State of Virginia, do certify that R. E. Wynn, whose name is signed to the foregoing writing bearing date on the 1st day of January 1872 has acknowledged the same before me in my county aforesaid.

Given under my hand this 19th day of January, 1872.

JNO. Y. HARRIS,
Notary Public.

COUNTY OF DINWIDDIE, *To-wit:*

I, John Y. Harris, a notary public for the county aforesaid in the State of Virginia, do certify that Fanny B. Wynn the wife of R. E. Wynn, whose names are signed to the foregoing writing bearing date on the 1st day of January 1872, personally appeared before me in the county aforesaid and being examined by me privily and apart from her husband and having the said writing fully explained to her she, the — Fanny B. Wynn acknowledged the said writing to be her act and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 19th day of January, 1872.

JNO. Y. HARRIS,
Notary Public.

409 Essex County Court, Clerk's Office, January 25th, 1872.

This deed of trust was this day produced to me in my said office without being stamped, the bond which the said deed was made to secure, being stamped with United States Revenue Stamps of the value of one dollar and fifty cents, which was cancelled and with the Notary Public's certificate annexed, admitted to record.

Teste: JAMES ROY MICOU, *Clk.*

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

PLAINTIFF'S EXHIBIT No. 91. Filed with Depositions and Returned with Special Master's Report.

This indenture made and entered into this 16th day of March 1867 between John A. Parker and Robert E. Wynne each of the County of Dinwiddie & State of Virginia. Witnesseth: that the said John A. Parker for and in consideration of the sum of one thousand five hundred dollars ($1,500) to him in hand paid the receipt of which is hereby acknowledged, and the further consideration that he the said R. E. Wynne is to assume and pay the balance due on a deed of trust by said Parker of about ($500) five hundred dollars on certain property in the Town of Tappahannock Essex County Virginia for the benefit of the late R. G. Haile of Essex. He the said John A. Parker has this day sold to said R. E. Wynn by *by* these presents doth sell and convey his houses and lots in said County of Essex and Town of Tappahannock in the State of Virginia and all rights and privileges pertaining to said houses and lots a full description of which will fully appear by reference to the record of said County of Essex; and he the said Parker hereby warrants and will forever defend to said R. E. Wynn a perfect title to said property against the claims of all and every person and persons whatsoever. In testimony whereof the said Parker has signed his name and affixed his seal the day and year first written.

JOHN A. PARKER. [SEAL.]

Witness:
J. F. CALLAN.

410 DISTRICT OF COLUMBIA,
County of Washington, sct:

I, John F. Callan, Commissioner for Virginia in and for the District and County aforesaid do hereby certify that John A. Parker party of a certain deed bearing date on the sixteenth day of March A. D. 1867 and hereto annexed, personally appeared before me in said county and the said John A. Parker being personally well known to me to be the person who executed said deed and acknowledged the same to be his act and deed.

Given under my hand and official seal this 29th day of March A. D. 1867.

[Commissioner's Seal.]

JOHN F. CALLAN,
Notary Public.

Essex County Court, Clerk's Office, April 3rd, 1867.

This deed was this day produced to me in my said office duly stamped and with the Notary Public's certificate annexed admitted to record.

Teste: JAMES ROY MICOU, *Clk.*

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

PLAINTIFF'S EXHIBIT No. 92. Filed with Depositions and Returned with Special Master's Report.

Abstract of Title to the Tappahannock Wharf Property.

I.

Deed bearing date the 29th day of May 1858 from A. H. Jones conveys to H. W. Daingerfield "All right, title & interest into that property known as the Tappahannock wharf property together with the land attached, being the same property conveyed to the said Jones by the Maryland & Virginia Steam Packet Company" Recorded Deed Book No. 51 P. 177.

II.

Deed bearing date the 29th day of May 1858 from H. W. Daingerfield to James M. Mathews trustee conveys to the said Mathews trustee "the property known as the Tappahannock wharf property this day conveyed to the said Daingerfield by A. H. Jones," in trust to secure a bond for $1,000 due said Jones. Recorded Deed Book No. 51, 178.

411

III.

Deed bearing date June 22nd 1866 from H. W. Daingerfield & Wife to L. S. Farland conveys "one half undivided interest in the property known as the Tappahannock wharf property consisting of the wharf now in the course of being built, the abutments and the land thereto attached all appurtenances &c. Recorded Deed Book No. 51, Pg. 721.

IV.

Deed bearing date the 28th day of May 1867 from L. S. Farland & Wife to Mason L. Weems, Jacob Tome, Robert Alexander Taylor, James Taylor & John Gettings conveys "one half undivided interest in property known as the "Tappahannock wharf" together with the abutments to the said wharf and all the land known and used as a part of the said wharf." Recorded Deed Book No. 51, Pg. 771.

V.

Deed bearing date the 24th day of July 1869 from James M. Mathews (Trustee in a deed of trust from H. W. Daingerfield), con-

veys to Mason L. Weems, Jacob Tome, Robert A. Taylor Joseph James Taylor & John S. Gettings of the City of Baltimore Maryland, the interest of the said Daingerfield being a one half undivided interest in "the Wharf at Tappahannock known as the Tappahannock Wharf and appurtenances thereto belonging, including the abutments and piece of land thereto belonging. Recorded Deed Book No. 52 —? pg. 174.

5½ not on this abstract.

Va.

Deed bearing date the 4th day of January 1892 from Georgeanna Williams, Henry Williams Matilda S. Forbes & Sydney H. Forbes conveys to The Weems Steamboat Company of Baltimore Maryland the wharf which is generally known as the Tappahannock wharf and is situated in the County of Essex in the State of Virginia, and all the lands appurtenant to and used therewith and the easements and privileges thereto appertaining. Recorded Deed Book No. 56, Pg. 375.

In addition to the above property the Weems Steamboat Company purchased a small strip of land just between the *the* above described property, the title to which is given below.

412

I.

Deed from R. E. Wynn and Fannie B. Wynn, bearing date October 10th 1895 conveyed to The Weems Steamboat Company of Baltimore Maryland a strip of land adjoining the Tappahannock Wharf, all of which is described and set forth by metes & bounds in the deed and by a plat accompanying the deed. Recorded Deed Book No. 58 Pg. 143.

II.

This property was conveyed to the said Fannie B. Wynn by deed from R. E. Wynn bearing date April 13th 1889. Recorded Deed Book No. 55 Pg. 412.

III.

This property was conveyed to R. E. Wynn by deed from H. R. Pollard trustee bearing date the 15th day of August 1881. Deed Book No. 53 Pg. 602.

IV.

This property was conveyed to H. R. Pollard trustee by deed from R. E. Wynn and wife bearing date 1st day of January 1872. Recorded Deed Book —? 52 Pg. 492.

This property was conveyed to R. E. Wynn by deed from John A. Parker bearing date March 16th 1867. Recorded Deed Book No. 51 Pg. 158 and Parker's title long antedates the civil war.

Abstract of title to Ware's wharf Essex Co. Va., by his will admitted to probate in Essex County April 20th 1863 Edward M. Ware, devised to his son R. L. Ware, in fee simple the farm called "Water

View" and Wares Wharf is built on that farm, there has been no transfer of this property and R. L. Ware is still the owner.

Abstract of Title to Bowler's Wharf, Essex County, Va.

The wharf at Bowler's Essex County Virginia was built by permission of the Court on the public landing at Bowler's by B. L. Farinholt and Wm. H. Farinholt, the said B. L. Farinholt and William H. Farinholt by deed bearing date February 26th 1887, conveyed the property to Henry Williams of the City of Baltimore Md. Recorded Deed Book No. ——? 55 P. 1.

413 Henry Williams, sold the property to R. M. Neale, but Neale died before said Williams made him a deed, there are filed in the Chancery cause of Neales Adm. *vs.* Neale, in the Circuit Court of Essex County two letters from the said Henry Williams one dated June 15th, 1892, shortly after the death of R. M. Neale, to his son R. G. Neale saying that the property had been paid for and he was ready to make a deed, the other Jan. 7th 1893 to E. M. Ware, making about the same statement: there is no deed on record, the above is what appears from the records of Essex Co.

THOMAS E. BLAKEY,
Att'y at Law.

PLAINTIFF'S EXHIBIT No. 93. Filed with Depositions and Returned with Special Master's Report.

VIRGINIA:

Clerk's Office, Middlesex County Court, May 30, 1903.

I, F. M. Eastman, Clerk of the County Court of Middlesex in the State of Virginia do certify that among other records in my office the following appears.

This deed made this 1st day of May in the year 1857 between Opie Norris and Martha E. his wife and Caroline J. Kidd of the one part and James W. Fisher of the other part, Witnesseth: that in consideration of the sum of nine thousand and five hundred dollars in hand paid or secured to be paid to the parties of the first part by the said James W. Fisher the said Opie Norris and Martha E. Norris his wife and the said Caroline J. Kidd do grant unto the said James W. Fisher all of two tracts or parcels of land situate in the County of Middlesex the one containing five hundred acres and bounded on the North and North West by Parrott's Creek and the Rappahannock River on the East by the lands of Robt. L. Montague on the South by the other lands of James W. Fisher and on the West by Parrott's Creek; the other tract is supposed to contain between 67 and 68 acres and is bounded by the public road leading from Segars Swamp to "Ash Hill" and the lands of Lewis W. Gardner and John A. Montague and Ro. Mackan, the two being the lands of which Robt. B. Kidd died seized and possessed and which were derived from the said Robt. B. Kidd by said Martha E. Norris and Caroline J.

Kidd they being the daughter and widow of the said Robt. J. Kidd.

414 And the said Opie Norris and Martha E. Norris his wife and the said Caroline J. Kidd do covenant with the said James W. Fisher, in manner and form following that is to say that they have the right to convey the said land to the said grantee, that the said Grantee shall have quiet possession of the said land; that the said grantors have done no act to encumber the said land; and that they the said grantors will warrant unto the said James W. Fisher generally the property hereby conveyed. Witness the following signatures and seals.

OPIE NORRIS. [SEAL.]
MARTHA E. NORRIS. [SEAL.]
CAROLINE J. KIDD. [SEAL.]

STATE OF VIRGINIA,
County of Lancaster, To-wit:

We, A. L. Carter and James K. Ball Justices of the Peace for the County of Lancaster in the State of Virginia do certify that Martha E. Norris the wife of Opie Norris whose names are signed to the writing above bearing date on the 1st day of May in the year 1857 personally appeared before us in the County aforesaid and being examined by us privily and apart from her husband and having the writing aforesaid fully explained to her she the said Martha E. Norris acknowledged the said writing to be her act and declared that she had willingly executed the same and does not wish to retract it. Given under our hands this the Eighth day of May 1857.

A. L. CARTER, *J. P.*
JAS. K. BALL, *J. P.*

COUNTY OF LANCASTER, *To-wit:*

I, A. L. Carter a Justice of the Peace for the County aforesaid in the State of Virginia do certify that Opie Norris and Caroline J. Kidd whose names are signed to the writing above bearing date on the 1st day of May in the year 1857 *has* acknowledged the same before me in my County aforesaid. Given under my hand this 8 day of May 1857.

A. L. CARTER, *J. P.*

In the Clerk's Office of Middlesex County, July 27, 1857.

The above deed bearing date 1st May 1857 being certified by Justices of the Peace is received for record and is truly recorded.

Teste: P. T. WOODWARD, *Clerk.*
Teste: C. P. LAYTON, *D. C.*

415 Evans from Cohn, &c.

This deed made this 20 day November 1874 between Jacob Cohn assignee in Bankruptcy of James W. Fisher and Thomas Croxton *t*rustee under deed of trust from said Fisher of the first part and A. B. Evans of the second part.

Witnesseth that whereas at a sale made by the grantors in this decree on the 26 of Novr. 1873 at Saluda Middlesex County Va., of the tract of land called "Kidds" the property of the said Fisher said Evans became the purchaser for the sum of Thirty two hundred dollars one-third cash and the balance in six and twelve months with interest. And whereas the said Evans has fully paid and satisfied said purchase money now therefore the said Cohn Assignee and Croxton Trustee do grant sell and convey unto said Evans the said tract of land lying in Middlesex County Va., bounded by the Rappahannock River, the farm of R. L. Montague the farm called "Buckingham" and the creek running *been* "Kidds" and "Nesting" with all buildings improvements rights &c., Estimated as containing five hundred acres but sold in gross and not per acre with special warranty.

Witness the following signatures and seals.

JACOB COHN, *Assignee.* [SEAL.]
THOS. CROXTON, *Trustee.* [SEAL.]

CORPORATION OF RICHMOND CITY, *To-wit:*

I, James M. Mathews Commr. in Chancery of the Chancery Court of said city in the State of Virginia do certify that Jacob Cohn whose name is signed to the writing above bearing date on the 20th instant has acknowledged the same before me in my Corporation aforesaid.

Given under my hand the 24th day of November 1874.

JAMES M. MATTHEWS,
Comr. in Chancy.

ESSEX COUNTY, *To-wit:*

I, Henry W. Daingerfield Commor. in Chancery of the Circuit Court of said County in the State of Virginia do certify that Thos. Croxton whose name is signed to the writing above bearing date on the 20th inst. has acknowledged the same before me in my County aforesaid.

Given under my hand the 25 day of Nov. 1874.

H. W. DAINGERFIELD,
Commr. in Chy.

416 VIRGINIA:

In the Clerk's Office of Middlesex County Court, Decmr. 7th, 1874.

This deed was received and together with the Certificates admitted to record and is truly recorded.

Teste: P. T. WOODWARD, *Clerk.*

I hereby certify that the foregoing is a true copy of deeds from Opie Norris and wife and Caroline J. Kidd to James W. Fisher and of Jacob Cohn Assignee and Thos. Croxton, Trustee to A. B. Evans. Witness my hand and the seal of County Court of Middlesex this 30 day of May 1903.

[SEAL.] F. M. EASTMAN, *Clerk.*

PLAINTIFF'S EXHIBIT No. 94. Filed with Depositions and Returned with Special Master's Report.

Bay Port Wharf.

I.

Deed from B. L. Farinholt dated *June 29 1892* to Lelia M. Farinholt his wife and recorded in the clerk's office of Middlesex County *D. B. No. 31 page 94.* In consideration of love and affection conveys to her following property. All the realty now owned by him at Bay Point to-wit: 3 acres purchased from one T. C. Montague and others, and the store house and wharf property thereon; 65 acres more or less adjoining the above mentioned property, also his ⅓ interest in a grist mill owned by him, Jno. R. Segar and Jno. A. Carlton.

II.

Deed from Sarah C. Richardson *et als.* dated May 22 1885 to B. L. Farinholt and recorded D. B. No. 28 page 375. In consideration of $250.00 conveys the 65 acres of land mentioned above including buildings thereon rights of way, waters &c.

III.

Deed from T. C. Montague and wife C. D. Montague, dated July 14 1870 to B. L. Farinholt, and recorded D. B. No. 24 page 206. In consideration of $150.00 conveys to him with general warranty that tract of land containing 3 acres more or less, bounded on North by Rapp'k River; East and South by lands of Jno. Richardson, and on West by public road.

417 This is as far back as I can trace the title to this property that is in a connected manner. Evidently the Montagues inherited this 3 acres from some one, as I can find no deed whereby same is conveyed to them.

This three acres of land and store house are now being rented to R. H. Bland & Co. by the Circuit Court of Middlesex County to pay a debt of B. L. Farinholt due the estate of Jno. A. Carlton decd. in pursuance of an order in the Chancery suit of Street, J. M., Receiver *vs.* B. L. Farinholt. The same was leased to them for a period of ten years seven of which have expired, at $300.00 per annum. I am informed by the attorney in the suit that this debt is very nearly paid. The wharf is not embraced in this order but is still under the control of Farinholt, whom I am informed rents it to the Weems Steamboat Co.

Waterview Wharf.

I.

Deed from Jacob Cohn Assignee in Bankruptcy of James W. Fisher and Thomas Croxton Trustee, dated Novr. 20, 1894 and recorded in D. B. No. 25 page 341. In consideration of $3200.00 conveys to A. B. Evans the tract of land called "Kidds" the property of said James W. Fisher containing 500 acres, bounded by Rapp'k River, the farm of R. L. Montague, the farm called Buckingham and the creek running between "Kidds" and "Nesting." This land was sold by the said Thomas Croxton Trustee at public auction at Saluda on Nov. 26, 1873 and A. B. Evans became the purchaser.

II.

Deed from Ovie Norris & wife and Caroline J. Kidd dated *May 1st 1857* and recorded D. B. No. 21 page 617 in which deed they convey to James W. Fisher in consideration of the sum of $9,500 two tracts of land "Kidds" containing 500 acres and the other tract containing between 67 and 68 acres.

JNO. R. SAUNDERS,
Att'y, Saluda, Va.

May 30, 1903.

418 *Depositions on Behalf of Defendants.*

Filed with Special Master's Report, October 26, 1903.

WEEMS STEAMBOAT COMPANY, Plaintiff,
against
PEOPLE'S STEAMBOAT COMPANY, Defendant.

FREDERICKSBURG, VA., *Aug.* 26, 1903.

Depositions on behalf of the defendant, taken by consent of the parties, at the court house, Fredericksburg, Va., this 26th day of August, 1903, before Ernest M. Long, Esq., Special Master appointed by decree of the Circuit Court of the United States for the Eastern District of Virginia, at Richmond, Va., in the above-mentioned cause.

Present:
William D. Carter, Esq.,
Hon. A. T. Embrey, for Defendant;
George Weems Williams, Esq., for Plaintiff.

Captain WEBB SMITH, a witness introduced on behalf of the defendant, first duly sworn, deposes as follows:

By Mr. CARTER:

Q. Where do you reside, Captain?
A. Sharp's Wharf?

Q. How long have you lived at Sharp's?

A. I have been there about seven years.

—. Where did you live previous to taking up your residence at Sharp's?

A. I lived at Bowler's.

Q. Please state whether or not you have ever spent any time at or near Bayport?

A. Yes, sir, I was there and conducted the oyster business very near two years.

Q. Have you or not frequently visited Bayport before and since the time you have stated you made your headquarters there?

A. Yes, I have been there several times before, and a great many times since.

Q. Please state whether or not you are familiar with the location and surroundings of Bayport?

A. Well, yes, sir, Bayport Wharf is between a cliff and a store-
house, which I suppose is a distance of 25 feet each way be-
419 tween the cliff and the wharf and the wharf and the store-
house—25 feet to the best of my recollection.

Q. Is there or not a road along the shore passing the shore end of the wharf, passing the storehouse?

A. Yes, sir; there is a road that leads up to the Owen Hill, that is a distance of half a mile I judge, from the wharf, up the river; and there is a road extended on below that, to Cooner House landing where the Blands conducted business for several years. I judge it is a quarter of a mile—something like that.

Q. Is there or not a grist mill near Bayport Wharf?

A. Yes, sir, there is a mill near there, a couple hundred of yards may be.

Q. To whom did the mill property belong?

A. It did belong when I was there, to Col. Farinholt; I don't know whether he owns it now; he did when I was there.

Q. Please state whether or not there was any obstruction such as gates, bars or other impediments to free travel on the road between Bayport and Owen Hill, or on the road between Bayport Wharf and Jamaica?

A. No, sir; There was not any.

Q. Did or not the public freely use both these roads?

A. Yes, sir; they did, going to and fro.

Q. Were or not the public accustomed to go by either of these roads, or both of them to Bayport Wharf, for the purpose of shipping and receiving freight?

A. Yes, sir, they did; they came to and fro.

Q. State whether or not there is a public landing at Bayport?

Plaintiff's counsel objects to this question, for the reason that whether or not there is a public landing there is a question of law and not of fact, and that the same can be proved by the records of the County Court.

A. Yes, sir, it has always been considered so while I was there.

Q. State any circumstance which may have arisen while you were

there, which especially called your attention to the character of this landing?

Counsel for plaintiff objects to this question for the same reasons assigned in the case of the previous question.

A. On one occasion a good many colored men came off the boat and they were charged a quarter a head to come ashore, and
420 they refused to pay, saying it was a public landing and they would go where the- pleased. I don't think they had any trouble after that. I think they just went to and fro. I know in that instance they went off without paying.

Counsel for the plaintiff objects to the answer for the same reasons as those mentioned above, and also because it is hearsay.

Q. Please state whether or not any further effort was made to charge people for going out upon the wharf at Bayport, or for coming into the shore from the pier-head, while you were at Bayport?

Counsel for plaintiff objects on the ground that the witness has not shown that he possesses any knowledge, and that his answer must be based upon hearsay.

A. None that I ever heard of.

Counsel for plaintiff objects to the answer, for the same reasons as those assigned to the question—that it is hearsay.

Q. Please state where you were accustomed to be in pursuit of the business you say you were carrying on at Bayport during the time you were there?

A. I occupied one of the houses attached to the wharf; I was out there daily, to and fro on the wharf, while I was there conducting the oyster business.

Q. Were you or not specially apt to be present on the wharf at the time people would naturally come and go to and from the boats?

A. Yes, I was there pretty nearly every boat.

Q. And do I or not understand you to state that with these opportunities for observing and knowing, that no other demand for money for the privilege of people going ashore or going to the pier-head was made by those in charge of the wharf while you were there?

A. No, sir; none that I ever heard of.

Q. Please state whether or not shortly below the shore end of the wharf there is a high cliff?

A. Yes, sir, there is a high cliff just below the wharf.

Q. Please state whether or not a little higher up the river shore than this cliff referred to, there is a marshy pool a few steps back from the ordinary water line of the river?

A. Yes, sir, there is.

Q. Please state whether or not the shore end of the wharf at Bayport touches the shore at a point lower down the river than the
421 upper end of the marshy pool, and higher up the river than the cliff you mention?

A. Yes, the wharf is above the cliff and the pool borders on the main road that goes down to the Bayport wharf and the storehouse.

The road divides the pool from the store building; very near together there.

Q. Is or not a part of the pool further up the river shore than the wharf?

A. Oh yes, sir.

Q. Then I understand you to say that the shore end of the wharf touches the river shore above the cliff, and lower down the river than a point even with the upper side of the marshy pool. Am I or not correct?

A. That is correct.

Q. How far is it in feet, as near as you can estimate, from the front of the store to the shore end of the wharf?

A. Well, I don't think it is over twenty-five feet.

Q. Is or not the space between the front of the store and the shore end of the wharf open and unobstructed and freely used from time to time by carts and wagons and other vehicles going to the store and to the wharf?

A. Yes, sir.

Q. Please state whether or not there is a post office at Bayport?

A. There is.

Q. Please state where the post office is kept?

A. In the store there.

Q. Please state whether or not mail bags are brought to this post office?

A. They were at that time, I judge they are now, I don't know.

Q. By what means, or routes, was the mail brought to and carried from the post office at Bayport?

A. In carts and little vehicles—road carts we call them. They would come down from Jamaica, then from Micou's.

Q. Then do I or not understand you to say that the office had a land service in both directions?

A. Yes, sir.

Q. Was there or not also a mail route to and from Bayport by the steamboats?

A. Oh, yes, sir.

Q. Did or not the postmaster, or the mail messenger, carry the mail bags from the post office to the steamboat along and over Bayport Wharf?

A. They did.

Q. You have stated that you resided at Sharp's?

A. Yes, sir.

Q. Please look at the paper now handed you marked "Defendant's Exhibit A," and state what it is, and whether or not you have seen the original of which it purports to be a copy.

A. This is a pretty good drawing of Sharp's Wharf. I saw the original. I own lots there and I saw a plat of the village, that Mr. Sharp has; I bought six lots from him, and I owned lots there bought from Mr. Downing—I own on both sides of the road.

422 Q. Please state whether or not the road marked on the plat (Exhibit A) "Main Street and Road," is a public road; and if so whither it leads.

Counsel for plaintiff objects, on the ground that the character of a road can not be proved by parol testimony.

A. Yes, sir, it is.

Counsel for plaintiff objects to the answer for the same reasons assigned in his objection to the question.

Q. Please state whether or not the public constantly use the road from the wharf, as shown on the diagram, at their will?

A. They do, yes, sir.

Q. Please state whether or not you have ever seen the County Superintendent of Roads at work repairing this road, with his hands?

Counsel for plaintiff objects, on the ground that the question is irrelevant and immaterial; also because the character of a road can not be proved except by the records.

A. Yes, sir, I have.

Counsel for plaintiff objects to the answer for the same reasons.

Q. Please state whether or not the citizens of the village at Sharp's and the citizens of the surrounding country, travel this road or street freely at all times, going to and from the wharf at Sharp's?

A. They do, sir.

Q. Please state whether or not there is a post office at Sharp's.

A. There is.

Q. Please state from what directions and by what vehicles or means the mail is brought to and carried from this post office?

A. Well, we have boat mail; then we have three mails by land, which they bring daily.

Q. Please state whether the land mails you refer to travel over the road marked "Main Street" on the diagram?

A. They do, yes, sir.

Q. Please state whether or not the postmaster or mail messenger carries the boat mail to and from the office over the road marked "Main Street," and the Wharf at Sharp's, show- on this diagram?

A. They do.

Q. Please state what county Sharp's is in?

A. Richmond County.

423 Q. Please state as near as you can approximate, the popu-
latio- of Richmond County?

A. Well, I reckon it is 25,000.

Q. Please state what outlets or means of transportation the people of Richmond County have?

A. Only by the steamers on the river, or by driving across to the Potomac—the Rappahannock or the Potomac.

Q. Please state whether or not there is any other wharf structure in the vicinity of Sharp's Wharf?

A. No, sir, no other there.

Q. Which is the nearest wharf on the Rappahannock River above Sharp's, on the same side?

A. Wellford's Wharf is the next wharf above.

Q. Which is the next wharf below on the same side?

A. Whealton's.

Q. Please state whether or not Sharp's was ever called by any other name?

A. Yes, it was called Milton.

Q. You have stated that you resided at Bowler's prior to taking up your residence at Sharp's?

A. Yes, sir..

Q. Please state whether or not you are familiar with the wharf and its surroundings, at Bowler's?

A. Well, yes, sir, I am very well acquainted. I lived there quite awhile. The main county road runs right down pretty straight to the wharf, and it has been sometime ago, but they had a public landing there. I was there when they surveyed the ground off.

Plaintiff's counsel objects to all evidence as to whether it is a public landing, first because it is not responsive to the question; and second, because the character of a landing can not be proved by parol testimony.

Q. Please state whether or not the survey of a public landing which you say you witnessed as Bowler's was a substantial compliance with the order of court, a copy of which, marked "Defendant's Exhibit B" is now handed you.

Plaintiff's counsel objects to this order because on a prior date, to wit, February 16, 1874, the Court granted Messrs. Hundley and Newbill the right to build a wharf, and therefore, no subse-uent order could be passed without the consent of the said Hundley and Newbill, or their heirs. And the question is objected to because if the order is admissable it speaks for itself.

A. Yes, sir, it was.

Plaintiff's counsel objects to the answer, for the reasons assigned in his objection to the question.

424 Q. Please state whether or not the public used the portion of shore at Bowler's which you state was surveyed off as a public landing, for the purpose of stacking for shipment, lumber, wood, ties and other commodities?

A. Yes, sir, it was.

Q. Please state whether or not the shore end of the wharf at Bowler's touches upon and within the boundaries of the public landing which you saw surveyed and staked off?

A. Yes, sir, it did.

Q. *It* is not the wharf at Bowler's wholly within the boundaries of the public landing as specified in the order of court which you have seen?

A. I think so.

Q. Is it or not wholly within the *place* of *share* which you saw surveyed off?

A. Oh, yes, sir.

Q. Is or not a post office kept at Bowler's?

A. Yes, sir.

Q. Please state the means and routes by which mail is brought to and carried from the office at Bowler's?

A. At that time there was only a boat mail; there wasn't any land mail.

Q. Please state if you know whether or not there is a land mail at Bowler's now?

A. No, sir, I don't know whether there is now, or not.

Q. Are you familiar with the country for several miles back of Bowler's and have you or not frequently traveled over the roads around Bowler's?

A. Yes, sir, I know the country very well.

Q. Do you know of any place in that vicinity called Santa Cross?

A. I do.

Q. Do you know the whereabouts of Bird's Bridge?

A. Yes, sir.

Q. Please look at the paper now handed you, marked Defendant's Exhibit "C," and state whether or not the roads described in the said paper either go to Bowler's Wharf themselves, or intersect with a road which does go to the public landing at Bowler's?

Plaintiff's counsel objects, on the ground that the paper offered to the witness is immaterial and irrelevant; the question is objected to because the contents of the paper speak for themselves.

A. Yes, sir, they lead to Bowler's.

Q. Please state whether or not you are familiar with the wharf and surroundings at Whealton's?

A. Well, only right in the village. I was never out in the land much. I have been to the wharf frequently and to the stores there, and they lead pretty much the way they do at Sharp's—the main road comes right down to the foot of the wharf.

425 Q. Please state whether or not you are familiar with the wharf at Wellford's and the situation there?

A. Well, I cannot say that I know much of Wellford's. I have been *under* there to the wharf and there in the store, but I was never out in the land.

Q. Please state whether or not you know if Wellford's was formerly known by some other name?

A. No, sir, I don't think it was—not that I have heard of.

Cross-examination.

By Mr. WILLIAMS:

Q. Do you know the location of the Weems Steamboat Company's property at Sharp's wharf?

A. Oh, yes, sir, very well.

Q. Take the plat which has been offered in evidence, filed by the defendant as Exhibit "A," and say whether or not the lines of that property are on that plat?

A. Well, I should say it was, yes, sir. This is the wharf, the way I understand it. This is the road. I should think it was.

Q. Does not the Weems Steamboat Company own any land there?

A. None that I ever heard of.

Q. You spoke about a survey at Bowler's Wharf. Was there any wharf there when the survey was made that you speak of?

A. Well, I don't remember whether the wharf was there or not; I know the wharf had been there, but I know it had been swept away by ice, and I can not say whether it had been built up then or not; it had been sometime ago and I don't remember. I know there had been a wharf there before that.

head and run way extending into Bowler's? A. No, sir, I was made you don't know whether or not there was a pier-head and runway extending into Bowler's?

A. No, sir, I can not say that the pier head was there. The runway was there.

Q. Who repaired the runway and kept it up and claimed ownership of it at that time?

A. Mr. Neale.

Q. How long have you lived at Sharp's Wharf?

A. Very near seven years.

Q. How long did you live at Bayport?

A. I was there very nearly two years.

Q. How long did you live at Bowler's?

A. I judge I was there about nine years—between eight and nine years.

Q. If you do not remember whether or not a wharf at Bowler's was there when the survey was made, how do you know that the survey included the land to the end of the wharf?

A. I remember the bridge being there at the foot of the
426 wharf, but the pier was swept away; and I can not say Whether the pier-head was there at that time or not, but the bridge was.

Q. Was the bridge included in the survey you have spoken of?

A. Oh, yes, sir.

And further this deponent saith not.

WEBB SMITH.

NOTE.—By agreement between the parties by Counsel, the signature of the witness is waived.

MATTHEW J. GATELY, another witness on behalf of the defendant, first duly sworn, deposes as follows:

By Mr. CARTER:

Q. Please state where you reside?

A. Fredericksburg, Va., 501 "B" Street.

Q. Please state whether or not now or at any other time, you have been connected with the city government?

A. Yes, sir, I was a member of the City Council for two years.

Q. Please state what line of business you are in?

A. I am in the general grocery business.

Q. I understood you to state that your place was 501 B Street?

A. Yes, sir.

Q. Is that or not Main Street?

A. Yes, sir, Main Street.

Q. Please state whether or not you have opportunities for judging of the traffic and travel from the section of country down the Rappahannock River to Fredericksburg.

A. Well, sir, the most of the travel comes up that street; of course all the passengers generally come up that street; they pass my place of business.

Q. Please state whether or not you have observed the amount of travel and traffic passing there in a business way, for some years?

A. You mean the contrast between the present and the past?

Q. Yes.

A. Well, sir, I notice an increase in it.

Q. Please state what caused the increase, and since when you have noticed the increase?

Counsel for plaintiff objects to this question as irrelevant and immaterial, and outside the bounds of this Commissioner.

A. Well, I should say the putting on of another boat on the Rappahannock River.

427 Q. Please state whether or not you have observed the time of arrival of the "other boat" which you have referred to, and the time of arrival of the boats from Baltimore to Fredericksburg?

A. Well, the river boats appear to me to arrive earlier than they did in past years, of course.

Q. Do I or not understand you to say that the river boats arrive earlier than the old boats formerly?

A. Yes, sir, they do.

Q. By the "river boats" do I or not understand you to refer to the "Tourist" and the "Caroline?" What do you call the "river boats?"

A. I call the "Caroline" and the "Tourist" the river boats.

Q. Do you or not mean to say that the river boats arrive much earlier than the Baltimore boats?

A. Yes, sir; it is apparent to anyone who has ever lived here.

Q. Have or not the river boats continuously brought a much larger number of passengers than formerly came by the Baltimore boats?

A. Yes, sir.

Q. Is or not the increase of passenger traffic the cause of the increase of trade?

A. Yes, sir.

Q. Has or not the increased trade resulting from this increased passenger travel been considerable?

A. Yes, sir.

Q. Have you or not seen many of the passengers in your place of business, and done business with them?

A. Of course I have received my share of the trade, being on the direct line, sir.

Q. Then do I understand you to state that the river boats have materially increased the general business of Fredericksburg merchants?

A. Yes, that is my candid opinion of it.

(Cross-examination declined.)

And further this deponent saith not.

MATTHEW J. GATELY.

NOTE.—By agreement between the parties, by counsel, the signature of the witness is waived.

428 B. J. SAUNDERS, another witness on behalf of the Defendant, first duly sworn, deposed as follows:

By Mr. CARTER:

Q. Please state where you reside?

A. In Essex County, Virginia.

Q. Please state what position, if any, you fill in the said county, and your occupation?

—. I am County Surveyor of the County, and also a farmer.

Q. Please state whether or not you have been educated as a civil engineer, and whether or not you have been a professor in any institution of learning?

A. Well, sir, I was educated partly at the Virginia Military Institute, but did not graduate. I have taught in several institutions.

Q. Please state whether or not you are familiar with the wharf at Tappahannock?

A. I am.

Q. Please state whether or not you have recently examined the records of the Court House in Essex County, with reference to the landing and wharf there?

A. Yes, sir; not fully of course. It would have taken me a long time to have gone back over all the transfers of the property—wharf property—from time to time.

Q. Please look at the paper now handed you, marked Defendant's Exhibit "D," and say whether or not you have seen the original, and whether or not this is a correct copy?

A. Yes, sir, I have seen the original. This is a correct copy.

Q. Please state where you found the original of that paper?

A. In the Clerk's Office at Tappahannock.

Q. Please state whether or not the original of this map is a part of the official records in the Clerk's Office at Tappahannock?

A. It is.

Q. Please state whether or not the streets in Tappahannock to-day conform to the streets as laid off upon this plat?

A. In the main they do. There has been some encroachment on the streets by the citizens of Tappahannock, in the way of porches, fences, &c.

Q. Did you or not make a survey of the wharf, and a portion of the river front at Tappahannock, recently?

A. I did.

Q. Have you a plat made in accordance with such survey?

A. I have.

Q. Did you or not make the survey with full knowledge of, and after examining carefully the original of the plat filed as Exhibit "D," and the records referring thereto?

A. I did.

Q. Please produce the plat of the river front, which you state you have made?

A. (Witness here produces plat which is filed herewith, marked Defendant's Exhibit "E.")

429 Q. I notice that the plat *of* which you have just produced and which has been marked Defendant's Exhibit "E," lines

indicating by the notes on the plat, a fence running south 2 degrees west, from the corner of the Wynn lot, as shown on the plat, with Main Street. Is that or not correct?

A. That is correct, sir.

Q. I note on the diagram there is marked "Wharf 666 feet long," and at the end of the same marked "pier head." Is that or not a correct diagram, accurately drawn, of the wharf at Tappahannock?

A. The distance from the shore line—the length of the wharf and pier-head is 666 feet by my measurement.

Q. I notice a dotted line upon that plat, continuing a line marked "fence" north 70 east, and on the southern side of Queen Street as shown on your plat, said dotted line appears to intersect the pier-head. Does or not that correctly show the situation as it is upon the ground to-day?

A. I think so, sir.

Q. Did or not you carefully survey that line with your instruments?

A. I did.

Q. I notice dots marked "old piling" to the northward of the diagram of the pier head. Are they or not piling which formerly supported the pier head in front of Queen street?

A. I think so, sir.

Q. I notice a diagram on both sides of the shore line, as shown on your plat, marked "Pickle Factory," with a diagram leading from the same to the bridge of the main wharf. Please state whether or not there is to-day a walkway or runway from the pickle factory to the wharf bridge, as indicated by the lines and notes on your plat?

A. There is.

Q. The diagram of the pickle factory shows the pickle factory in front of Queen street. Is or not the factory actually in front of the street?

A. It is in front of the street, but a little to the left of the center of the front.

Q. I note upon your plat another line marked "Edge of the highland." Is there or not a marked bank, or considerable terrace, at the place indicated?

A. There is.

Q. Please state the character of the ground between the shore line and the fence indicated on your plat from the corner of the Wynn lot around to the corner of the Latane lot with Queen street?

A. It is a sandy beach or shore.

Q. Does or not the line marked "Edge of highland" show the edge of high water and high tides?

A. I never saw the tide that high, but would presume that it would rise that much, knowing the height of the tides in the river.

Q. Is or not the land outside of the fence flat?

A. Flat.

430 Q. Is there or not any obstruction to travel between the lines showing the fence and the river shore between Queen street and Main street?

A. There is none.

Q. How long have you been familiar with the town of Tappahannock and its surroundings?

A. It is hard to say. I visited the town of Tappahannock when I was a mere boy, and have been visiting it ever since.

Q. Has there or not ever been within your knowledge any obstruction to the free use of the river shore outside of the fence of the Wynn lot?

A. I have never known any obstruction, and never heard of any objection to its being used by the public.

Q. Is it or not the frequent and constant custom of the people at large, from a considerable section of Essex county, to come to this river shore at Tappahannock for purposes of shipping and receiving freight of all kinds?

A. It is the custom.

Q. Is it or not the custom of many to go to the same place to purchase herring in season?

A. It is.

Q. Upon the plat marked Exhibit "D" the lower line of lots next to the river seems to leave a shore not included in the survey of the lots. Is there or not a space to-day between a line run where the boundary of the front tier of lots would come to the river shore?

A. There is.

Q. Did you or not actually make a survey and measurement to determine this fact?

A. I did.

Q. I see upon your map a note marked "Wagon road." Are there or not signs of constant use of the river shore between Queen street and the wharf, and Prince or Main street and the wharf, indicating as much use of the shore as of the adjacent streets?

A. Yes, sir.

Q. Referring again to the old plat, please say between what streets on the old plat the present wharf would abut at the shore?

A. Between Queen street and Prince street.

Q. Are they or not designated as "A" and "B" on the old plat?

A. They are.

Q. Are you or not informed as to whether or not there is a Custom House of the United States Government located at Tappahannock?

A. There is a Custom House at Tappahannock.

Q. Will you please state on what street, and what part of the street, the Custom House is located?

A. It is located on Prince, or Main, street; I do not remember what building it is in at the present time; they change it very frequently—or have changed it.

Q. Please state whether or not there is a post office of the United States Government at Tappahannock?

A. There is.

Q. On what street is the post office located?

A. The same street.

431 Q. Please state if you know whether or not the post office gets and sends out mail by the boats?

A. It does.

Q. Please state whether or not any other mail routes serve that office?

A. There are at least three routes come to that office—perhaps more.

Q. Please state approximately, if you can, the population of Essex county?

A. I think it is near ten thousand.

Q. Please state whether or not Tappahannock is the county seat of Essex?

A. Tappahannock is the county seat of Essex county.

Q. On what street is the court-house now located?

A. On Prince, or Main street.

Q. Referring again to the copy of the old plat, please state whether or not the court-house is within the boundaries of the property reserved by this plat for public use?

A. It is.

Q. Please state whether or not you are familiar with the location and surroundings at Leedstown?

A. I am not so familiar—I have been there a few times in my life.

Q. Will you please state when you were last there?

A. Last Monday—August 24th.

Q. Please state whether or not you carefully observed the location and situation of the pier at Leedstown, with reference to lines and buildings on the shore?

A. I did.

Q. Please state whether or not you made a survey of the wharf and the land adjacent thereto?

A. I did.

Q. Did you not make a plat of such survey?

A. I did.

Q. Will you please produce it?

(Witness here produces plat, which is herewith filed marked Defendant's Exhibit "F.")

I would like to add that I made this plat from the best information that I could obtain.

Plaintiff's counsel objects to the introduction of this plat because the witness testifies that he made it from the best information he could obtain, without showing that he had any deed containing a description of the property, and because thereupon there appears the words "Disputed line."

NOTE BY SPECIAL MASTER.—The words "public" or "private" referring to the character of roads, wherever the same appear upon the plats formerly exhibited by the plaintiff, having been heretofore stricken out at the request, or upon the objection of counsel for the defendant, it is agreed that the same, or similar words, shall be stricken from all plats exhibited in evidence by the defendant.

432 NOTE BY DEFENDANT'S COUNSEL.—The language of the ob-tion by counsel for the plaintiff to the admission of the defendant's plat of Leedstown, filed as Exhibit "F," is objected to by counsel for the defendant because by a necessary implication it

raises an inference that the title deeds of the plaintiff give some description which would serve as a guide to a surveyor running the lines of the property surveyed by the said deeds; whereas the deeds themselves filed as exhibits give no such description, making it necessary for the surveyor to proceed upon information from outside the deeds in locating and surveying the property.

Q. Please state whether or not you visited Leedstown and inspected the ground, and with your chain and transit made the necessary field survey to enable you to draft your plat to scale?

A. I did.

Q. Please state whether or not the plat you produce as Exhibit "F" is a plat made from such notes and drafted to scale?

A. It is.

Q. Please state how you determined the line marked "Fence south 7 west," and continued by a dotted line into the Rappahannock River, as shown on the plat?

A. The fence west of the Spillman lot on one side of the road—the Spillman carriage shop, blacksmith shop and the Spillman warehouse abut on that line. Therefore, with the information of the gentleman who lived there at the Spillman lot that that was the true line, and there was no dispute about it, I took that as a bearing.

Q. Then do I or not understand you to say that in the field a line drawn from the corner of the Spillman lot north of the road at Leedstown continued in a southerly direction, with the same bearing, with the fence north of the lot, would touch the west sides of the blacksmith shop and the Spillman warehouse, and intersect the pier head, as shown upon this plat?

A. It would—it does.

Q. I see upon the plat marked "F" a diagram with the note "Walkway." Is there not such a structure leading from the Spillman warehouse to the down-river end of the pier?

A. There is.

Q. I note that upon your plat you indicate the course south 7 west between the corner of the Spillman dwelling house lot and the river by a dotted line. Is there or not a fence or obstruction at the place indicated by the dotted line?

A. There is no obstruction; the line on that plat just touches the back of those houses.

Q. Then I understand you to mean that the backs of the houses are on Mr. Spillman's line?

433 A. The gentleman living on the Spillman property informed me that the back of those houses was an undisputed line. I might also add that he stated to me at the time that he gave the same information to Mr. Garland, and that he carried the chain for Mr. Garland and wished to take me over the same course—or offered to take me—and show me where Mr. Garland surveyed.

Q. Would or not the course as indicated upon the plat now handed you marked "Plaintiff's Exhibit 23" cut through the two shops and the Spillman warehouse if started from the fence corner north of the road?

A. It would cut those houses, if the line began at the corner of the Spillman lot north of the road.

Q. Please look at the plat marked "Plaintiff's Exhibit 23" and see if the starting point for the line to the pier is immediately opposite the point indicating the fence corner north of the road?

A. It seems so.

Q. Please state whether or not the Spillman shops and warehouses are shown on the plat marked "Plaintiff's Exhibit 23?"

A. They are not.

Q. Please state whether the walkway to the Spillman warehouse is shown on the plat marked "Plaintiff's Exhibit 23"?

A. It is not.

Q. Please state whether or not from your own knowledge the plat marked "Plaintiff's Exhibit 23" fully and correctly represents the situation of the pier at Leedstown?

A. I should say not.

Q. I note upon your plat that there are no fences indicated between the road and the river in the immediate vicinity of the post office and the pier head. Is this an omission; are there no fences right there?

A. There are no fences there.

Q. I note upon the plat marked "Defendant's Exhibit F" lines marked "Old ditch wall" and "Disputed line." Please explain what they mean?

A. Having no plat to go by, I tried to get all the information I could from the citizens at Leedstown. They could give me no definite line there. They stated that that line was in dispute and had been for years, and that Mr. Gardland had nothing to show them that it was a fixed line.

Q. Please state what citizens you conferred with, and from whom you sought information as to landmarks while at Leedstown making this survey?

A. Mr. Smoot, the merchant; the gentleman who lives on the Spillman lot—I can not remember his name; never heard it before; and Mr. Dickerson, of Saunders' Wharf.

A. I see upon your plat a double line marked "Old ditch wall." What information did you obtain from citizens as to any line marked by the ditch indicated on the plat.

434 Counsel for plaintiff objects to this question as calling for hearsay.

A. I was informed that this old ditch wall back of the Smoot lot was originally the line between the property, which if continued would strike a different line from what the Weems people now claim.

Q. Then do I or not understand you to say that you learned that this old ditch was an old line between old places?

A. It was so stated to me.

Plaintiff's counsel objects to both question and answer as being hearsay.

Q. Were or not the parties from whom you inquired for landmarks and information as to lines parties who had long been citizens

of the vicinity and in a position to become acquainted with the definite lines of property in that locality?

A. Some of them were.

Q. Did you or not get the fullest and best information you could in reference to the said lines?

A. I did.

Q. Please state whether or not there is a post office at Leedstown?

A. There is.

Q. Is it or not kept in the building indicated as "Post Office" on the diagram?

A. It is.

Q. Then do I or not understand you to say positively that with reference to the relative positions of the pier-head, the Spillman warehouse, the railway, the shops and the post office, your plat is accurate?

A. I tried to make it so.

Cross-examination.

By Mr. WILLIAMS:

Q. Mr. Saunders, is Mr. Smoot the gentleman from whom you got some of the information in making this plat, the agent of the steamer "Tourist" at Leedstown?

A. I don't know, sir.

Q. How much land belongs to the Weems Steamboat Company, according to your plat, as you surveyed it?

A. I did not calculate it.

Q. Could you calculate it?

A. I could have calculated what they told me are the claimed lines, but I told them I had nothing to do with the disputed property. I was employed to go there to survey the wharf and surroundings from the best information I could get.

Q. That walkway—do you know when that was put up?

A. I do not, sir.

435 Q. What did you take as your base—as a certain definite point from which you started to make this plat?

A. The corner of the Spillman lot.

Q. Which corner?

A. The northwest corner—I mean the southwest corner.

Q. Furtherest from the shore line?

A. Yes, the southwest corner of the Spillman lot, immediately on the road.

Q. Who did you get that from?

A. From the gentleman that lived on the Spillman property.

Q. Who was he?

A. I have forgotten his name.

Q. How long did he live there?

A. I don't know that. He informed me that he was the gentleman who chained for Mr. Garland, and could show me the point that Mr. Garland took. That is, he was the man who gave Mr. Garland information.

Q. Did you start from the corner of the fence line to the river?

A. I did.

Q. The lines marked "disputed lines"—what are they on your plat?

A. They are imaginary lines.

Q. Between whom is the dispute?

A. I learn between the Taylor heirs and the Steamboat Company.

Q. What are those shops marked Spillman shops, Spillman warehouse on your plat?

A. One, I think, is a carriage shop; another a blacksmith shop, and the other seems to be a warehouse.

Q. Are they old or new buildings?

A. Old—very old buildings.

Q. In what particulars is the plat of Mr. Garland of Leedstown Wharf property different from yours, or in what respect do you think Mr. Garland's plat inaccurate?

A. The direction of the line between the Spillman lot and the post office lot. I have that line running south 7 degrees west. He has it south 1 1-2 east.

Q. Is that the only particular that you have cause for criticism of Mr. Garland's plat?

A. The shore line on my plat passes the Weems warehouse; he has it passing under the pier head.

Q. Are they the only two particulars where you criticise the accuracy of Mr. Garland's plat?

A. That is about the only difference I see. He hasn't those houses in, but that *it* not an error.

Q. I notice in the deed from Massey to Tome dated the 20th day of December, 1869, that in the conveyance of the land they mention the warehouse and the blacksmith shop. Is that the blacksmith shop mentioned on your plat—the one referred to in the deed, do you suppose?

A. I don't know.

436 Q. Is that blacksmith shop, so far as you know, old enough to have been the blacksmith shop mentioned in the deed I have just referred to?

A. It looks very old; I could not say.

Q. Would you be surprised if you were told that that blacksmith shop was forty years old?

A. I would not.

Q. Have you got the blacksmith shop and Spillman's warehouse correctly scaled on the plat?

A. I have—tried to.

Q. Could you tell me how much land is contained in the plat that you have assigned to the Weems Steamboat Company property?

A. I could not.

Q. Could you from the information now in your possession state whether or not the property you have assigned in the plat as belonging to the Weems Steamboat Company contains a half acre or not?

A. That would depen*t* somewhat on the road. The road as laid

down there is not as wide as a public road, and it would be questionable as to where the center of that road is.

Q. I notice on the plat that you have assigned no property to the People's Steamboat Company, is that correct?

A. That is correct, as far as I know. I did not inquire whether they had property there or not.

Q. You have got on one side of the Weems Company property "Spillman lot." Were you told that that lot belonged to Spillman?

A. I was.

Q. Who owns on the other side of the Weems Steamboat Company's property, so far as you know?

A. The Taylor heirs, I was informed.

Q. How much below the Weems Steamboat Company's property do the Spillmans own, according to your information?

A. I did not inquire.

Q. Some distance down, however, is it not?

A. I should say so from the size of the lot his house is built on.

Q. And the Taylor lot on the other side—how far up does that extend?

A. I don't know that.

Q. Some distance up, is it not?

A. I really don't know.

Q. But you know that no property intervenes between the Weems Steamboat Company's property and the Spillman property on the lower side, and the Weems Steamboat Company's property and the Taylor property on the upper side?

A. I was so informed.

Q. How did you get your direction when you started from your base? What direction did you take?

A. The prolongation of the fence between the two lots, and the backs of the shops and the Spillman warehouse.

Q. Could you have prolonged the line of the fence so as to take in the lower end of the wharf and pier-head?

A. No, sir, not without cutting through those houses—the
437 shops and the Spillman warehouse. It would then not have been a prolongation of the fence.

Q. Did you take the bearing of that fence from that base inland?

A. I did.

Q. What was that bearing?

A. South 7 degrees west.

Q. Does that south 7 degrees west refer to the prolongation of the line towards the river, or the prolongation of the fence line inward?

A. Both.

Q. Who owns the property upon which is situated Smoot's store and the post office?

A. I don't know.

Q. Is that fence a new or an old fence?

A. It seemed to be an old fence.

Q. If, according to Mr. Garland's plat, the area owned by the Weems Steamboat Company amounts to three-eighths of an acre,

would the Weems Steamboat Company's land as shown on your map amount to that much?

A. I could not say.

Q. Why could you not say?

A. I have never calculated the area.

Q. You say that Mr. Garland took in too much land for the Weems Steamboat Company on the Spillman end, and that in all other particulars his plat seems correct. If that is so, and his plat gives the Weems Steamboat Company three-eighths of an acre, would not your plat necessarily give to the Weems Steamboat Company less than three-eighths of an acre?

A. I could not say his plat was correct in all other particulars, because the upper end of his line I do not know whether it is correct or not.

Q. Did you not say that Mr. Garland's plat was correct except in two particulars, to-wit., the line on Spillman's property and the water line?

A. Presuming that the line between him and Taylor is the correct direction of the line as he took it—as to whether it is the line between the two properties, I can not say, because I don't know where the true line is?

Q. Then, so far as you know, Mr. Garland's plat is correct, except as to the line between the Weems property and the Spillman lot——

A. I have not scaled it; I simply pointed out what I believed to be two errors; the other part of it I have not scaled and can not say whether it is correct or not.

Q. I handed you both plats—both your plat and Mr. Garland's plat—and asked you to state positively in what particulars Mr. Garland's plat is incorrect?

A. My judgment is that the line or fence between the Spillman lot and the post office fence is incorrect on Mr. Garland's plat. As it appears to me, that is the main difference. The water line is an indefinite line; he may have been there when the tide was very low and placed his water line at a little different place from what I did.

438 Q. Then do I understand you that according to your plat the Weems Steamboat Company's lot is smaller on your plat than on the plat of Mr. Garland's?

A. I really can not answer that.

Q. You have got both plats before you, and you can see how the lines laid down on Mr. Garland's plat differ from the lines laid down on your plat, and can't you tell from that whether the area marked by the lines on your plat cover more or less than the area marked by the lines on Mr. Garland's plat?

A. I could not take Mr. Garland's plat and calculate the area, and I don't think any other surveyor could.

Q. You say that you can not calculate the area from Mr. Garland's plat?

A. Not without having the bearings and distances down.

Q. But can't you tell whether or not the lines of Mr. Garland's plat give more land to the Weems Steamboat Company than the lines

of your plat—or, in other words, whether or not the lines of Mr. Garland's plat are further in or out as regards the lines of your plat?

A. I can not answer that.

Q. I have in my hand the plat made by yourself and by Mr. Garland. I want to ask you whether the line between the Weems property and the Spillman property on the lower side, as shown by Mr. Garland, takes more land from Spillman than your plat does?

A. I think it does.

Q. I want to ask you whether the line between the road and the property of the Weems Steamboat Company, as shown on Mr. Garland's plat, takes in more or less property in favor of the Weems Company than the line as shown on your plat?

A. I don't know how wide Mr. Garland has his road. I don't know the distance from his road line to his water line. Therefore, I can not say.

Q. I notice on the plat that Mr. Garland has marked 10 poles and 12 links from the road to the corner of the warehouse on the Weems Steamboat Company's property. Will that aid you in answering the question I just asked you?

A. I can tell what point he means the 10 poles and 12 links to go to.

Q. How far do you place your road line from the shore line?

A. It is 145 feet from the post office to the outer edge of the pier.

Q. What is the length of the line between the Weems property and the Taylor property, as marked on your plat from the road to the river line?

A. It is indefinite; I meant to leave it indefinite, both as to direction and distance.

Q. Why did you mean to leave them indefinite, both as to direction and distance?

Q. Because I could get no reliable information as to which was the true line there.

439 Q. I notice that you have prolonged the fence between the Taylor property and the Weems Steamboat Company property on the upper side of the lot, is that correct?

A. It is. The bearing put down there is correct.

Q. Then, so far as your plat is concerned, you are unable to tell how much area is assigned to the Weems Steamboat Company property, for the reason that you have several of the locations indefinite, and no directions or distances thereon?

A. I am unable to give the area of the Weems property, not having been able to find the upper line of their property.

Q. How long were you at work on your plat at Leedstown? How long were you at Leedstown?

A. Perhaps half a day.

Q. Was all of that devoted to making this plat?

A. No, sir.

Q. Or getting information from which you could make the plat?

A. Yes.

Q. Have you got any field notes in your possession which would

enable you to make a calculation from your plat of the area assigned to the Weems Steamboat Company?

A. I have not.

Q. I note on your plat that you have but one distance noted, to wit, from the post office to the pier. Is that correct?

A. The distance from the post office to the pier I think is correct.

Q. Is that the only distance you have marked there?

A. The dimensions of the wharf I think are there.

Q. In other particulars your plat shows neither distance nor direction?

A. It shows direction and other particulars.

Q. Where does it show directions—in what particulars?

A. The direction of the fence or fences around the Spillman property; the direction of the fences around the Smoot lot—I think that is all.

—. Do you mean the direction between the Spillman property and the Weems Steamboat Company's property?

—. I do.

Q. There is no fence between the Weems Steamboat Company's property and the Spillman property, is there?

A. It is a prolongation of the line.

Q. By whom was that old plat that has been referred to in the evidence in reference to Tappahannock, made, and for what purpose?

A. It was made by Harry Beverly in 1706, as shown by the records in the Clerk's Office of Tappahannock, for the purpose of laying out a town by order of court.

Q. Do you know who Harry Beverly was?

A. He lived two hundred years ago.

Q. I mean his official position?

A. He signs his name as "Harry Beverly, Surveyor;" that is all I know about him.

440 Q. You do not pretend to know that the condition of the water line of the Rappahannock River is the same to-day as it was when this plat was made?

A. I do not pretend to know.

Q. Can you locate on the old plat the land now owned and designated as the Wynn lot on the plat you have made?

A. The Wynn property seems to be on or in front of lots 20 & 24.

Q. Do you know whether or not this old plat has been modified from time to time in the course of the last two hundred years?

A. I do not.

Q. Do you or do you not know whether any parties have acquired property either from the State or from the Crown, along the shore line of the river?

A. I do not.

Q. I notice on the plat you made of Tappahannock Wharf there are little dotted lines almost in front of the Wynn property, which include an area which surrounds the wharf end of the property. What do those dotted lines represent?

A. The Weems property as on record in Tappahannock Clerk's Office.

Q. What is the character of the soil between the shore end of the wharf and the fence of the Wynn property which is nearest the river?

—. It is a sandy shore, except a hardened walkway which seems to have been made there of some other material, perhaps ashes and some rock I think.

Q. Does Mr. Wynn's lot run down to the river shore?

A. He claims that it does.

Q. I note on the plat that you have Mr. Wynn's lot terminating at a point quite a distance from the shore line on Prince, or Main Street?

A. That is a fence that is around his lot; he uses the lower end of his lot as a grazing lot. The land between there and the river he claims as his own but he has not got it fenced in; whether it is his or not I do not know.

Q. Is not the bulk of the business passing over that strip of shore land from Prince Street, on one side, and Queen Street on the other, mainly traffic going from or to the Weems Steamboat line?

A. I think it is, mainly.

Q. Do you know whether that strip of shore land between Prince and Queen Streets, from your knowledge of the records of your county, has ever been condemned as a public road?

A. I do not know.

Q. Who owns the pickle factory marked on your plat at Tappahannock?

A. I don't know that.

Q. Who is in apparent possession of that pickle factory property?

A. A man by the name of Durham seems to be managing it.

Q. Do I understand you to mean that this pickle factory was built on the shore, without the builder of said pickle factory
441 obtaining any deed to the property upon which the factory is located?

A. I don't know anything about his right to put up the factory.

Q. In front of the Latane lot, running down to the shore line of the river, to whom does that property belong?

A. I learn that Mrs. Latane claims her front. I have been told that Mrs. Latane claims her front.

Q. Then neither the fence on the Latane lot running almost parallel with the river, nor the fence on the Wynn lot running almost parallel with the river, as shown by your p[illegible] includes all the property claimed by either Wynn or Latane; is t[illegible] correct?

A. It does not.

Q. Then why did you mark on the plat the "Wynn lot" and the "Latane lot."

A. To show the location of their property, as fenced in.

Q. I hand you Mr. Garland's plat of Tappahannock Wharf, and your own plat of the Tappahannock property, and ask you in what particulars the property assigned to the Weems Steamboat Company on the Garland plat is different from the land assigned to the Weems Steamboat Company on your plat?

A. He has down on the Weems Steamboat property the distance

from the Wynn line to the water. There is no such measurement on record. He has in front of Main Street "Wright's land." That is incorrect.

Q. Is Mr. Garland's plat, so far as it touches and shows the Weems Steamboat Company property, correct in area, directions and distances?

A. He has the line North 63 east. It is recorded North 62 degrees east. I do not know how he got at his direction. He has the distance 7 poles from the Wynn property to the water. The distance is not recorded in the Clerk's Office.

Q. Could he not have obtained that distance by actual measurement.

A. He could obtain the distance, but as to where the true water line is that is uncertain.

Q. In important particulars then it is correct?

A. I think so; I think that is unimportant.

Q. Did you when you examined the Tappahannock property have before you a copy of a plat made by Mr. William D. Carter in 1895, when the Weems Steamboat Company purchased certain property from Mr. Wynn?

A. I did.

Q. Does your plat agree with Mr. Carter's plat of that property?

A. Not exactly. Mr. Wynn was with me and seemed to be uncertain as to the exact location of a corner. He said that he put the corner there and he thought it was within a few feet of Mr. Carter's survey, but he was not sure of it. I got the exact distance in front, or the width of the Weems property, but whether it was on
442 one side of the fence or the other I could not exactly say, but I got it near enough for all practical purposes I thought.

Q. Did you take the iron pipe which is marked on your plat, as your basis?

A. Yes.

Q. Did you not have some difficulty in locating that iron pipe by reference to Mr. Carter's plat?

A. Yes, sir.

Q. You experienced that difficulty?

A. Yes, sir.

Q. I notice on your plat that you have a lot marked "Jones lot" Does that run down to the water's edge?

A. It does. The fence does.

Q. Is that the land that Mr. Garland has marked "Wright's land" on the plat?

A. Well, he has Wright's land in front of the Wynn property and also in front of the street and in front of the Jones property.

Q. Has the People's Steamboat Company any property on the river shore at Tappahannock, to your knowledge?

A. Not to my knowledge.

Q. Then do I understand you to say that your plat of the Weems Steamboat Company's property, Mr. Carter's plat of the Weems Steamboat Company's property, and Mr. Garland's plat of the

Weems Steamboat Company's property, practically agree in all material essentials?

A. I think so.

Redirect examination.

By Mr. CARTER:

Q. In the statement you have just made that the three plats made by Mr. Carter, Mr. Garland and yourself, of the Weems Steamboat Company's property at Tappahannock agree—do you refer to the lot of land on the shore?

A. On the shore.

Q. Please look again at Mr. Garland's plat of the Tappahannock Wharf, and state whether or not he has correctly named the streets upon his plat?

A. He has Main street named wrong. What he has as Main Street is Queen Street, and what he has as Prince Street is Prince or Main Street.

Q. Please state what scale Mr. Garland's plat is drawn to?

A. He does not state on the plat, that I can see.

Q. Please look at Mr. Garland's plat and your own plat, and note the direction of the pier approach and the location of the pier head, and say whether or not Mr. Garland has located the pier head upon his plat in a proper place, and if not, wherein Mr. Garland's plat is erroneous in this particular.

A. Not having any instruments with me I can only answer by the appearance of the direction of the lines to the eye. It appears
443 to me that my plat runs more obliquely to the streets than Mr. Garland's does.

Q. Then I understand you to say that Mr. Garland has located the pier head upon his plat too far down the river, instead of putting it up at or near the line of Queen Street as your plat shows it?

A. It appears so to me.

Q. You were asked upon a cross-examination whether or not the shore line had changed since the original laying out of the town of Tappahannock according to the plat dated 1706 and made by Harry Beverly, Surveyor. Please state whether or not, taking the oldest and most substantial landmarks you could find, you made an examination to see whether or not the streets are approximately where the ancient plat would indicate?

A. The streets I think are just where the old plat indicates. As I stated, they have been encroached upon *my* porches and fences somewhat.

Q. Judging from the relative widths of the distance between the front boundary line of the front tier of lots next to the river, and the water as shown on the old plat, has there been an accretion or decretion to the river shore in front of the town, and between Main Street & Queen Street since the original laying out of the town?

A. I suppose, from the appearance of the old map, that there has been an accretion—I can not say to what extent. There seems to have been a cove here in front of one of the blocks, that I think is entirely filled with sand. I don't remember any cove there now.

Q. Does or not the ancient plat give the length of the several blocks or squares?

A. It does.

Q. Do you or not measure the depth of the blocks in the front tier?

A. I did one block.

Q. Would that measurement indicate an accretion of the shore at that point, judging of the shore by the indicated water line on the old plat?

A. I suppose it would. The measurements stop so much further from the river than I supposed the lines came to, there must have been an accretion since that. I was surprised when I got to the end of the lot according to the old plat.

Q. Do you or not know whether the present court house at Tappahannock is the oldest court house now standing in that town?

A. I have been told that what is now used as a Baptist Church was originally the court house, on the same block.

Q. Are both the buildings—the one which you say is now used as a church, and the one which is now the court house—on the block indicated on the ancient plat as for public use.

A. They are.

444 Recross-examination.

By Mr. WILLIAMS:

Q. What street is north of Prince Street?

A. Queen Street.

Q. What street is to the south of Prince Street running parallel with it?

A. Duke Street.

Q. What street is north of Queen Street, running parallel with it?

A. Marsh Street.

By the SPECIAL MASTER:

Q. Are the cross streets in Tappahannock now named?

A. I don't know whether they are called by the old names or not. I never heard them spoken of by any name.

Q. Can you identify a street called on the map of 1706 "Water Lane?"

A. Yes, sir.

Q. Do you know the distance from the northern bounds of that street to the present water line?

A. I do not. I surveyed the street down to 20 poles, as marked on that; found it did not go anywhere near the water, and did not continue it.

Q. What means have you of identifying the street called Water Lane?

A. It is first street from the river running parallel with the river. There has never been any other street, I presume, anywhere in this locality. It is the third street from Church Lane. There are only three streets running parallel with the river. The nearest is Water

Lane, the next Cross and the next Church Lane. Those streets are there, and no others, running parallel with the river.

Q. Can you identify any of the landmarks mentioned and described in this old map, with their relative present location?

A. The block marked "I," which was set apart for the public buildings, is now the third block from the river, as originally. It is the second block from the road leading into the country from Marsh Street.

Q. How many cross streets are there between the public square and the river?

A. There are two.

Q. Are either of these cross streets named, to your knowledge?

A. I suppose they are named, but I never heard them called by their names.

Q. Do you know the distance from the northern boundary of the public square to the water line?

A. I do not.

And further this deponent saith not.

B. J. SAUNDERS.

NOTE.—By agreement between the parties, by counsel, the signature of the witness is waived.

A recess was here taken until 3:45 P. M.

445 C. W. JONES, another witness on behalf of the defendant, first duly sworn, deposed as follows:

By Mr. CARTER:

Q. Please state where you reside and what your business or profession may be?

A. Residence, Fredericksburg; and my business is that of dry goods.

Q. Are you or not a member of the Business Men's Association of Fredericksburg?

A. I am.

Q. Please state whether or not at any time you served upon any committee of that Association concerning transportation and connections between Fredericksburg and points in the Rappahannock Valley by boat?

A. Yes, sir, I served almost continuously for quite a number of years until very recently, but remember beginning with the agitation of the boat question sometime about 1900, I think, I refreshed my memory by looking over the records the other day and I found that committee was formed in October, 1900, and was composed of Biscoe, Carter and Jones.

Q. Will you please state whether or not that committee communicated with Mr. Williams in reference to establishing a boat line on the Rappahannock, which would reach Fredericksburg and pass the wharves on the upper part of the river in daylight.

Plaintiff's Counsel objects to this question as being immaterial and irrelevant.

A. Yes, sir. We communicated with Mr. Williams in a great number of ways. If I remember correctly we had a great many communications with Mr. Williams and invited Mr. Williams here to appear before the Association. I think the records will show that invitation.

Q. Did or not Mr. Williams accept the invitation and appear before the Business Men's Association?

A. Mr. Williams did not accept it, and he did not appear before the Association at the invitation of this Committee. There has been a time when he did appear before it, when this part of the question was up. My recollection is that Mr. Scott—either Mr. Scott or Mr. Cole—read some communications from Mr. Williams declining the invitations on account of health, I think, or something of the sort.

Q. Was or not the request made of Mr. Williams by the Committee to establish a boat service between Fredericksburg and Urbanna, or some point in the vicinity of Urbanna down the river,
446 which service should be by a boat plying the river in day light?

Plaintiff's counsel objects to the question as immaterial and irrelevant.

A. Yes, sir, the request was made, and very strongly emphasized.

Plaintiff's counsel objects to the answer for the same reasons assigned in the objection to the question.

Q. Were or not a number of letters written by the Committee to Mr. Williams on this subject, and did or not the Committee receive a number of letters from Mr. Williams on the subject?

Plaintiff's counsel objects to the question as immaterial and irrelevant?

A. Yes, sir, letters were written and replies received.

Plaintiff's counsel makes same objection to answer.

Q. During what year or years did this correspondence take place?

Plaintiff's counsel renews his previous objection.

A. Beginning with 1900. Just how long we continued that I do not know, but I think sometime in 1900 Mr. Williams formally declined to give us any such boat service.

Plaintiff's counsel makes same objection to answer.

Q. Was or not a service established similar in all respects to that which Mr. Williams had been requested to give?

A. Yes, sir.

Q. What has been your observation and experience as to the results to the Business Men of Fredericksburg, from the establishment of that boat service.

Plaintiff's counsel renews previous objection.

A. Well, sir, to give you my own personal knowledge, and I sup-ose that will be in keeping with every other man's in
447 the mercantile business here, the advantages have been very great both to the material business interests of Fredericksburg, to my interests personally and to the interests of the people down the river. I personally would not see the line discontinued if I had to put my hand in my pocket to keep it up. There has business come here to-day. I have had about twenty-five years' experience in the town; I have seen the business here and I have seen it go away, and I am very glad to say that I have lived to see it come back under this boat system. This is the only thing that has brought it back, and it is coming more and more every day.

Q. Then I understand you to say postively that Mr. Williams was requested, and definitely requested, in 1900 and 1901, to give this service?

Plaintiff's counsel objects to this question as irrelevant and immaterial.

A. He most assuredly was.

(Cross-examination declined.)

And further this deponent saith not.

C. W. JONES.

NOTE.—By agreement between parties by counsel, the signature of the witness is waived.

T. N. BRENT, another witness on behalf of defendant, first duly sworn, deposed as follows:

By Mr. CARTER:

Q. Please state where you reside?

A. I reside in Fredericksburg.

Q. Please state what business you are in?

A. I am in the general dry goods business.

Q. Please state whether or not you are a member of an organization in Fredericksburg known as the Business Men's Association?

A. I am a member of the Business Men's Association, yes, sir.

Q. Please state whether or not you fill any position as officer or committeeman in that organization?

A. Yes, sir. I have served on several committees, and in fact was the first President of the Business Men's Association.

448 Q. Is there or not a committee of that association known as the Committee on Non-Resident Trade?

A. Yes, sir, I am a member of that committee now, and in fact Chairman of that committee.

Q. Please state whether or not as Chairman of the Non-Resident Trade Committee you have noticed any benefit to the business interests of Fredericksburg accruing from the establishment of a day service between Fredericksburg and points below on the Rappahannock River by boat?

Counsel for plaintiff objects to this question as irrelevant and immaterial.

A. Yes, sir, I must say that there has been a considerable increase of late in our trade on the Rappahannock River.

Counsel for plaintiff objects to the answer for the same reasons assigned in the objection to the question.

Q. Please state approximately the time of arrival of the day service, as now established?

Counsel for plaintiff renews previous objection.

A. I really don't know. I never attend the boats myself, but usually those boats arrive here, I think, between four and five o'clock. I usually send a young man to meet those boats, and he usually goes between four and five o'clock.

Q. Please state whether or not it was your custom formerly to send a clerk to meet the arrival of the boats from Baltimore?

A. No, sir, never did before.

Q. Will you please state as accurately as you are informed, the time of arrival of the boats from Baltimore?

Counsel for plaintiff objects to this question as immaterial and irrelevant.

A. Well, we could not say that there was any regular time for the arrival of the boats. There was a time set for their arrival, I think, but those boats were generally late.

Q. Were they *are* not generally very much late—by hours?

Counsel for plaintiff renews previous objection.

A. Yes, sir, that was my experience.

Q. Were you or not informed as a member of the Business Men's Association, of the formation of the committee charged with
449 the duty of conferring with Mr. Henry Williams, of the Weems Line, with a view to inducing Mr. Williams to establish a day boat service between Fredericksburg and points below on the Rappahannock some two years ago?

A. My recollection is this, in regard to that: that I was on the committee, and Mr. Williams was advised to give us a boat at this end of the line, and in fact Mr. Williams was here and met the committee on one occasion at my store, and we talked the matter over, and at the time he consented to give us an excursion here—in fact to give us several excursions—which he ran.

Q. How along ago was it that Mr. Williams was at your store?

A. I could not recollect how long that has been, but I would suppose it was somewhere in the '90's.

Q. Do you or not know of the appointment of a subsequent committee consisting of other members than yourself, which committee was charged with the duty of conferring again with Mr. Williams in regard to the establishment of a day boat service?

A. Yes, sir.

Q. Please state if you remember who served on that committee?

A. I do not remember. I do not know that I could recall every member of that committee. I was a member of that committee myself, and you were and Mr. A. R. Howard was also a member of the committee, and Mr. Jones and Mr. I. Hirsh. I think there was another member of that committee—Mr. Biscoe, yes.

Q. Did or not the committee communicate with Mr. Williams in reference to the boat matter?

Objected to by plaintiff's counsel, as irrelevant and immaterial.

A. Yes, sir, they did.

Q. Did or not the Committee request of Mr. Williams to give the service desired?

Objected to by counsel for plaintiff as irrelevant and immaterial.

A. They communicated with Mr. Williams on that subject, but I do not remember so much about the service, now—I can not recollect exactly about the service. I know the committee did everything in its power to give us better facilities at this end of the line.

Q. Did or not Mr. Williams finally decline to give any better service than he then and formerly had given Fredericksburg and the upper river.

Objected to on the grounds above named.

450 A. Yes, sir, he declined to do anything more than he had done.

NOTE.—It is agreed that the plaintiff's counsel objects to all questions in reference to the application to Mr. Williams for better facilities, and also as to whether or not the business of Fredericksburg has increased by reason of the establishment of river boats; and also in reference to the regularity of the Baltimore boats reaching Fredericksburg—for the reason that the same is immaterial and irrelevant. It is understood that this objection will apply to all questions along the lines above indicated, without counsel for the plaintiff interposing a specific objection to each question and answer hereafter in the examination of Mr. Brent and other witnesses to be hereafter called by the defendant.

Cross-examination.

By Mr. WILLIAMS:

Q. Does the Business Men's Association at present contribute to the support of the Steamer "Tourist," in money for her running?

A. I don't know of any regular contributions. There are no contributions from the Business Men's Association. There is no connection between the Business Men's Association and the "Tourist," that I know of. The Business Men's Association I think has contributed something to the "Tourist," as well as to other objects or enterprise of interest to the city, but not any more than she would to any other enterprise in the city.

Q. How much has the Business Men's Association contributed towards the support of the Steamer "Tourist?"

Objected to by counsel for defendant as being a private matter with which the plaintiff is not concerned.

A. I could not answer it any how.

Q. Is the Business Men's Association and the members thereof now contributing any money to the support of the Steamer "Tourist?"

A. I have no knowledge of anything of the kind, sir.

And further this deponent saith not.

T. N. BRENT.

NOTE.—By agreement between parties by counsel, the signature of the witness is waived.

451 R. L. BISCOE, another witness on behalf of the defendant, first duly sworn, deposed as follows:

By Mr. CARTER:

Q. Please state whether or not you are in business in Fredericksburg, and if so, in what line?

A. I have been in business in Fredericksburg for ten years, handling fertilizer, farming implements, grass seed, hay and grain.

Q. Please state whether or not there is an organization in Fredericksburg known as the Business Men's Association, and if yea, state whether or not you are a member of the same?

A. Yes.

Q. Please state whether or not at any time since you have been a member of the Business Men's Association of Fredericksburg, you have served on the committee known as the boat committee?

A. Yes, sir.

Q. Please state who were the actives members of that Association with you?

A. I don't recollect. I can name several of them, I think. I think T. N. Brent, W. D. Carter—and really I don't recollect, I could not state positively. I think the committee was larger, but I would not like to state pos-tively.

Q. Please state whether or not the boat committee of which you say you were a member, communicated with Mr. Henry Williams, and requested of Mr. Williams the establishment of a day service by boat between Fredericksburg and points between Fredericksburg and Urbanna on the Rappahannock River?

A. We did.

Q. Please state in what year or years the boat committee negotiated with Mr. Williams, of the Weems line, in reference to a day boat service?

A. I think it was in 1900 or 1901.

Q. Please state whether or not the committee definitely requestly Mr. Williams to put a boat on which should ply the Rappahannock River between Fredericksburg and Urbanna, down one day and up the alternate days?

A. That was the proposition, yes.

Q. Please state whether or not Mr. Williams declined to give the service asked for?

A. Well, as well as I recollect, Mr. Scott brought in an itemized statement of the cost of a river boat, and it was so erroneous that we declined the proposition. That is my recollection of the matter. I think Mr. Williams agreed to give the service if we would pay the loss sustained.

Q. Did or not Mr. Williams refuse to put on a boat unless an amount of money to cover expenses was guaranteed, according to the estimate to which you have referred as having been submitted by Mr. Scott?

Objected to by counsel for plaintiff, as leading.

452 A. Yes, sir that was my understanding, as I tried to state before. He agreed to give the service if we would pay the loss.

Q. According to the estimate?

A. Yes, sir; as read by Mr. Scott.

Q. Was or not Mr. Williams subsequently requested by the Committee to give the service without the guarantee to which you have just alluded?

A. I do not remember about that.

Q. Did or not Mr. W. D. Scott appear before the Association, after the submission of the estimate to which you have referred, and read a letter from Mr. Henry Williams declining to give any other service by boat on the Rappahannock than that in force at the time by the Baltimore boats.

A. He did.

Q. Have you or not noticed any effect upon the Business of Fredericksburg in general, or upon your business in particular, caused by the establishment of a day boat service on the schedule which Mr. Williams was asked to furnish?

A. I think the business generally in Fredericksburg has been improved very much by that service.

(Cross-examination declined by plaintiff.)

And further this deponent saith not.

R. L. BISCOE.

NOTE.—By agreement between the parties, by counsel the signature of the witness is waived.

Miss BESSIE CHESLEY, another witness on behalf of the defendant, first duly sworn, deposes as follows:

By Mr. CARTER:

Q. Miss Bessie, please state where you live?

A. Fredericksburg.

Q. And your profession or occupation?

A. Stenographer.

Q. Please state where you were employed in 1902?

A. At W. D. Carter's office.

Q. Please state *where* or not you made the affidavit which is now handed you—said affidavit being contained in the list of affidavits heretofore filed with the answer in this suit.

Plaintiff's counsel objects to the offering in evidence of the above-mentioned affidavit, inasmuch as the witness is present and could testify as to the alleged facts set forth in said affidavit.

A. I did.

453 Q. Please state whether or not as asserted in your affidavit you made up envelopes for wharfage at ten per cent. on the amount of business done at each of the wharves named in the affidavit, sealed and directed the same in a package to Mr. Henry Williams?

A. Yes, I did.

Q. Please state if each envelope was distinctly marked with the amount of the business done, the amount of money enclosed as wharfage, and the name of the wharf?

A. Yes.

Q. Please state whether or not you ever saw that package again, and if yea, state the circumstances under which you next saw it?

A. Well, Mr. Scott returned the wharfage and brought it up and said it was a package of money and I should be careful with it; and I told him I would be.

Q. Please state whether or not you have sent out checks for the wharfage at all the wharves used by the Steamer "Tourist?"

A. Yes.

Q. Please state whether or not you have at quarterly intervals sent checks to Henry Williams, of the Weems line, for the wharfage at the wharves claimed to be owned by the Weems Line?

A. I have.

Q. Please state whether or not any checks which you mailed to Henry Williams have been returned?

A. Yes, sir, they have been returned.

Q. Has it or not been your duty to care for and properly file all such vouchers?

A. Yes, they are on file.

Q. Are or not the accounts of the Steamboat business done by the "Tourist" so kept as to accurately show the business done day by day at each wharf?

A. Yes, they are.

Cross-examination.

By Mr. WILLIAMS:

Q. Were all the moneys and checks you sent to Henry Williams as President of the Steamboat Company, returned to you by him or by the agent for the steamboat company?

A. Yes, they were.

Q. In figuring up the ten per cent. wharfage what would you do when a passenger was landed or taken at a wharf, who had a pass? Would pay pay 10% on him, or not?

A. Yes.

Q. If one of the officials—for instance, Mr. Carter—would take the "Tourist" and land at Tappahannock, would you credit Tappahannock wharf with ten per cent. on Mr. Carter's fare, or not?

A. Yes.

454 Q. You would?

A. Yes, sir.

And further this deponent saith not.

BESSIE CHESLEY.

NOTE.—By agreement between the parties, by counsel, the signature of the witness is waived.

A recess was here taken until 7:30 P. M.

HENRY BYRD (Colored) another witness on behalf of defendant, first duly sworn, deposes as follows:

By Mr. CARTER:

Q. Please state what your business is, and what it has been for the past ten or fifteen years?

A. Well, my business for the last thirteen years has been driving here at Wheeler's stable, first for him, and Mr. Hayden. I have been driving for them for thirteen years.

Q. Please state whether or not you drive a public hack or carriage for Mr. Wheeler?

A. Yes, sir, it is a public carriage; runs to steamboats and trains, and carries passengers anywhere they want to go.

Q. Please state whether or not you have been accustomed to go to the steamboats to meet passengers?

A. Well, I go to all boats when I am in town.

Q. Please state what has been the usual time of arrival of the boats from Baltimore, known as the big boats?

A. What boats are you speaking of, the small boats or the large ones?

Q. The big ones?

A. If I must come down to fine facts and tell, those large boats from Baltimore are more or less late all the while; the earliest they do get here I will say is from 11—probably sometimes come about 10—but they hardly ever come here, lately, before two or three o'clock. This last time she come here I believe she didn't get here until six o'clock.

Q. Is it or not true that the big boats more frequently than otherwise arrive after 12 o'clock at night?

A. They do not get here any earlier, sir. It is very seldom they get here as soon as that.

(Cross-examined declined.)

And further this deponent saith not.

HENRY BYRD.

NOTE.—By agreement between the parties, by counsel, the signature of the witness is waived.

455 A. R. HOWARD, another witness on behalf of the defendant, first duly sworn, deposes as follows:

By Mr. CARTER:

Q. Please state your place of residence and occupation?

A. My residence is 400 Hanover Street, Fredericksburg, Va. My occupation is Cashier of the Conway, Gordon & Garnett National Bank.

Q. Please state whether or not you have been connected with any other bank or banks in this part of the State, in recent years?

A. I have been a stockholder in the National Bank of Fredericksburg; Vice-President of the Lancaster National Bank, at Irvington; President of the Bank of Middlesex, or Urbanna, Va.—in both of which latter institutions I held the controlling stock.

Q. Please state whether or not you are officially connected with the People's Steamboat Company; and if yea, state in what capacity?

Q. I am a stockholder in the Peoples Steamboat Company, and have been treasurer of the Company since its incipiency.

Q. Please state whether or not as a part of the duties of your office as Treasurer of the People's Steamboat Company, you have been accustomed to draw the checks for the payment of wharfage?

A. I have.

Q. Please state whether or not as a banker and cashier of the Conway, Gordon & Garnett National Bank, you are familiar with the signatures of many of the men engaged in business in the Rappahannock Valley below Fredericksburg?

A. I am familiar with many of the signatures.

Q. Please examine the check now handed you, marked Defendant's Exhibit "H," and state whether or not you drew the check, and if yea, for what purpose you drew the same, and state whether or not the check is endorsed by the payee, and whether or not has been regularly paid.

Plaintiff's counsel objects to the offering of the exhibit handed the witness, for the reason that the same is immaterial and irrelevant, inasmuch as its purports to have been issued on May 14, 1903, several months after the leasing of Whealton's Wharf by the Whealton Packing Company to the Weems Steamboat Company.

A. I did draw the check as Treasurer of the People's Steamboat Company, payable to the Whealton Packing Company, for
456 the purpose of paying wharfage for the steamer "Tourist" for the months of January, February and March, 1903. The check has been endorsed with the deposit stamp of the Whealton Packing Company, and was credited to their account in the Lancaster National Bank of Irvington, and paid to them by the Bank of Middlesex at Urbanna.

Plaintiff's counsel objects to the answer for the same reasons, to wit, that the paying of wharfage to the Whealton Packing Company after the execution of the lease to the Weems Steamboat Company, is an irrelevant and immaterial fact.

Q. Please examine the two checks and receipt now handed you,

marked Defendant's Exhibit "I," and state for what purpose these two checks were drawn, and whether or not they are endorsed by the payee, and whether or not they have been regularly paid?

Plaintiff's counsel objects to the offering in evidence of defendant's exhibit "I," for the reason that said exhibit refers to the payment of wharfage to A. B. Evans subsequent to the date of his lease to the Weems Steamboat Company.

A. I did draw these two checks as Treasurer of the People's Steamboat Company, payable to A. B. Evan's, for wharfage of the Steamer "Tourist," at Waterview Wharf for the months of January, February, March, April, May and June, 1903, both checks are endorsed by A. B. Evans in his own handwriting, with which I am familiar.

Plaintiff's counsel objects to the answer for the grounds already stated in the objection to the question; and for the further reason that the fact of the payment to A. B. Evans for wharfage at Waterview subsequent to the date of the lease by the said Evans to the Weems Steamboat Company, is an immaterial and irrelevant fact.

Q. Please examine the check now handed you, marked Defendant's Exhibit "J," and state whether or not you drew the same as Treasurer of the People's Steamboat Company, and if yea, for what purpose you drew the check, and whether or not it is properly endorsed by the payee, and whether or not the check has been regularly paid?

Plaintiff's counsel objects to the offering in evidence of defendant's exhibit "J," and also to the question, because the check
457 purports to be for wharfage of Bowler's Wharf for April, May and June, 1903, subsequent to the date of the lease by the payee to the Weems Steamboat Company.

A. I did draw the check as Treasurer of the People's Steamboat Company, to R. G. Neale, for wharfage of the steamer "Tourist," at Bowler's Wharf for the months of April, May and June, 1903. The check is endorsed by R. G. Neale in his own handwriting, with which I am familiar, and has been paid.

Plaintiff's counsel objects to the answer for the reasons already assigned in his objection to the question; and also because the fact of payment for wharfage of Bowler's Wharf for the months indicated in the answer (said months being subsequent to the date of the lease by the said R. G. Neale of Bowler's Wharf to the Weems Steamboat Company,) is immaterial and irrelevant.

Q. Please examine the check now handed you marked Defendant's Exhibit "K," and state whether or not you drew the check as Treasurer of the People's Steamboat Company, and if yea, for what purpose you drew the check, and whether or not it is properly endorsed, and whether or not it has been paid.

Plaintiff's counsel objects to the offering in evidence of Defendant's Exhibit "K," and to the question, because the Defendant's Exhibit "K," purports to be a check for wharfage of Carter's Wharf for the months subsequent to the date of the lease of Carter's Wharf to the

Weems Steamboat Company, and because the question is in reference to an immaterial and irrelevant matter, and because it is not shown that J. H. Carter, the payee named in the check, is the owner of Carter's Wharf.

A. I drew the check as Treasurer of the People's Steamboat Company for wharfage of the steamer "Tourist" for the months of January, February and March, 1903. The check is endorsed "J. H. Carter by Mrs. M. J. Carter, Administratrix." It was accepted and paid by the Bank of Middlesex as being properly endorsed.

Plaintiff's counsel objects to the answer for the reasons already assigned in his objection to the question, and also for the further reason that the fact of payment of wharfage on Carter's wharf subsequent to the date of the lease of said wharf to the Weems Steamboat Company by its owner, is immaterial and irrelevant.

458 Q. Please state who has owned Carter's wharf for some years, until recently.

A. I can not state that of my own knowledge.

Q. Please state whether or not, to the best of your information J. H. Carter was recently the owner of Carter's Wharf?

A. I have been so informed.

Q. Please state whether or not you have been informed of the death of Mr. J. H. Carter?

A. I have not.

Q. Please state whether or not the Cashier of the Bank of Middlesex would pay a check in favor of any payee, upon the endorsement of any party, as his administrator, administratrix or executor, without a certificate from the clerk of the court in which such personal representative qualified?

Plaintiff's counsel objects, for the reason that the witness can not know what a cashier in a bank might do under certain circumstances.

A. It is not always customary to demand a certificate of qualification for the endorsation of a check by the legal representative of the payee, the obligation lying upon the bank to see that the check reaches it through parties who are responsible for the facts stated in the endorsation.

Plaintiff's counsel objects to the answer as immaterial and irrelevant.

Q. Please state whether or not you have since drawn a check in favor of any party for the next quarter's wharfage at Carter's Wharf, and if so, in whose favor?

Objected to as immaterial and irrelevant.

A. I have drawn a check for wharfage at Carter's Wharf for the steamer "Tourist" for April, May and June, 1903, payable to Eva M. Carter.

Objected to as irrelevant and immaterial.

Q. Please examine the two checks and letter now handed you, marked Defendant's Exhibit "L," and state whether or not you drew

the two checks, and what disposition you made of them, and when you again saw them?

Plaintiff's counsel objects to the question and to the offering in evidence of Exhibit "L," because both question and exhibit are immaterial and irrelevant.

459 A. I did draw these two checks as Treasurer of the People's Steamboat Company, payable to B. L. Farinholt, for wharfage of the steamer "Tourist" at Bayport and at Monaskon for the months of January, February and March, 1903, which two checks were returned to me by B. L. Farinholt in his letter of May 26, 1903, in which he stated that he declined to receive them.

Plaintiff's counsel withdraws his objection to the question and to the answer.

Q. Please state whether or not you have since drawn other checks for wharfage at Monaskon and Bayport for April, May and June, 1903, and if yea, what disposition was made of the checks?

Plaintiff's counsel objects to the question because it relates to facts which are immaterial and irrelevant.

A. I have drawn checks as Treasurer of the People's Steamboat Company to the order of B. L. Farinholt, for wharfage at Bayport and at Monaskon for the steamer "Tourist," for the months of April, May and June, 1903. As the checks have never been returned to me they were presumably used.

—. Please state whether or not you are acquainted with the signature of T. D. Marks, of Naylor's Wharf?

A. I am.

Q. Please look at the receipt now handed you, marked Defendant's Exhibit "M," and say whether or not it is signed by T. D. Marks of Naylor's?

Plaintiff's counsel objects to the question and to the admissibility of the exhibit, because both are immaterial and irrelevant.

A. The receipt is in the handwriting of, and signed by T. D. Marks, of Naylor's.

Plaintiff's counsel objects to the answer, for the reason assigned in his objection to the question.

Q. Please examine the receipt now handed you and which was filed with the answer of the defendant in this cause, as one of the papers marked Exhibit "Wharfage" with said answer, and say whether or not it and the following paper each purporting to be a receipt for wharfage, are signed by T. D. Marks?

Plaintiff's counsel objects to the question and to the ad-
460 missibility of the exhibit, because they both relate to facts which are irrelevant and immaterial.

A. The two receipts are signed by T. D. Marks.

Plaintiff's counsel objects to the answer, for the reasons assigned in his objection to the question.

Q. Please look at the receipt filed as one of the papers marked Exhibit "Wharfage" with the defendant's answer in this cause, and say whether or not the same is signed by R. H. Bland, and if the signature is genuine; and answer the same question as to the following receipt also filed with the said answer.

Plaintiff's counsel objects to the offering in evidence of said exhibit, and to the question, because they both relate to facts which are immaterial and irrelevant.

A. The two receipts are signed by R. H. Bland, and the signature is genuine.

Plaintiff's counsel objects to the answer for the same reasons assigned in the objection to the question.

Q. Please state whether or not you have correctly drawn checks in favor of the Weems Steamboat Company in payment of the wharfage incurred by the "Tourist" at Port Royal, Leedstown, Tappahannock, Wellford's and Sharp's, and whether or not the same were regularly forwarded.

A. I have drawn checks payable to the Weems Steamboat Company for wharfage of the five named wharves for the two quarters of 1903, which checks were forwarded to the the Weems Steamboat Company at their office in Baltimore, Md. and they were returned to me by Mr. A. Leckey, their agent at Fredericksburg, Va., with the statement that the company declined to receive them.

Q. Please state whether or not so far as you have been able to observe, there has been any increase of traffic and business between Fredericksburg and the ints on the Rappahannock River as far as Urbanna since the establishment of the schedule for day boat by the People's Steamboat Company?

A. There has been a very decided increase.

Q. Please state whether or not there has been any noticeable benefit in business at and about Urbana since the establishment of the said day boat service?

A. There has been a material increase.

461 —. Please state whether or not any new business enterprises have been begun or installed at Urbanna or elsewhere along the Rappahannock River since the establishment of the said day boat service?

Plaintiff's counsel objects to this question as irrelevant and immaterial.

A. There have been.

Plaintiff's counsel makes the same objection to the answer.

Cross-examination.

By Mr. WILLIAMS:

Q. You state in your direct examination that the last checks you sent Col. Farinholt were presumably used. Would not those checks have come back to the People's Steamboat Company if they had been used?

A. They would have come back to them when their bank book was written up and settled, if they had been paid.

Q. So then as a matter of fact you do not know whether the last Farinholt checks have been used or not?

A. I stated presumably.

Q. (Question repeated.)

A. I do not.

Q. You said in your direct examination that J. H. Carter was the owner of Carter's Wharf. Were not his initials M. A. Carter?

A. I did not say so. I said I was informed so. Miskel A. Carter has been the owner of Carter's Wharf for years.

Q. Were you interested in the "Tourist" before the formation of the People's Steamboat Company?

A. I was not.

Q. Did you have any interest in the "Tourist" between November when she started to run on the Rappahannock River, until the incorporation of the People's Steamboat Company in 1903?

A. I did not.

Q. Are you a stockholder in the Company now?

A. I am, sir.

And further this deponent saith not.

A. R. HOWARD.

NOTE.—By agreement of the parties, by counsel the signature of the witness is waived.

462 Dr. A. C. FISHER, another witness on behalf of the defendant, being first duly sworn, deposes as follows:

By Mr. CARTER:

Q. Please state where you reside?

A. I reside at Emmerton, on the main road, the Ridge Road through the Neck.

Q. What county?

A. Richmond County.

Q. Please state what is your profession?

A. I am a practicing physician and have been for eighteen or nineteen years in that neighborhood. I lived there, either at Warsaw or in that community may be all my life from the time I was eight years old; I was only away in Kentucky and West Virginia for a short period.

Q. Please state whether or not you have been accustomed to travel all over Richmond County, and whether or not you are familiar with the roads and the country generally in Richmond County?

A. I am very familiar with the roads and have travelled them frequently.

Q. Please state if you know who is the Clerk of the County Court of Richmond County, at the present time?

A. J. B. Rains.

Q. Please state whether you know Mr. Rains personally, and know his signature when you see it?

A. I do.

Q. Please look at the paper now handed you marked Defendant's Exhibit "N," and say whether or not you are familiar with the road referred to in the said paper, and whether or not the same is open and freely used by the public, and whether or not it is in fact a public road, and whether or not the signature to the paper is the genuine signature of Mr. Rains, the Clerk?

Mr. WILLIAMS: Do you offer Exhibit "N" in evidence now of the contents or are you simply identifying the signature of the Clerk signed thereto?

Mr. CARTER: I offer the paper in evidence for all purposes for which the court order, of which it may be a copy is competent.

Plaintiff's counsel objects to the offering in evidence of said paper, because the said paper is immaterial and irrelevant in that it does not show on its fact that it purports or refers in any way to any of the wharves in controversy in this suit, and because it does not show on its face that the order of court was ever carried out. To the question he objects because it relates to facts which are immaterial and irrelevant and because it seeks to prove by parol testimony the character of the road.

463 A. This road certainly I remember the circumstances; I would not have remembered the exact date except for seeing it here. I remember the circumstances of the road being ordered constructed, and I know the fact that it has been constructed and is maintained by the county as a public road to the foot of the wharf not known as Wellford's Wharf, and I know this to be Mr. Rains' signature.

Plaintiff's counsel objects to the answer for the same reasons assigned in his objection to the question.

Q. Please state whether or not there was any other name for the wharf formerly, than Wellford's?

A. According to my recollection the wharf was in operation—no I don't know that it was in operation, but it was certainly under construction, sometime before they settled upon a name. Mr. Randolph Wellford is now in Richmond who owned the original property and has the original wharf built; he objected at first to its being called by his name, but there was no other suitable name, and they finally settled down to that. I don't know exactly when. I don't think it was ever known by any other name. The farm on which it was built—the lower end of the farm—is a farm known, and has been ever since my memory, as Pittsville—part of Mr. Wellford's property.

Q. Do I understand you to say that the road you have spoken of which is referred to in the court order of which you hold in your hand a copy marked "Defendant's Exhibit N," leads to Wellford's Wharf?

A. It does.

Plaintiff's counsel objects to the foregoing question and answer, for the same reasons assigned in his objection to the question preceding.

Q. Is there or not any other wharf on the farm known as Pittsville?

A. No other.

Q. What County is Naylor's Wharf in?

A. Richmond County.

Q. Are you or not familiar with Naylor's Wharf and surroundings?

A. I am.

Q. Please look at the paper now handed you marked Defendant's Exhibit "O," and say whether or not it is signed by the genuine signature of Mr. Rains, the Clerk, and whether or not the road to Naylor's is made a public road to the foot of the wharf by the order?

Plaintiff's counsel objects to the admissibility of the exhibit
464 "O," because the same does not show that any public road has been opened to Naylor's Wharf; and to the question, because it seeks to establish the character of the road by parol testimony of the witness, and because both said exhibit and said question are immaterial and irrelevant.

A. This is Mr. Raines' signature. I can not say positively that it has been put on the road docket in the Clerk's Office. I think it has, but I don't know that. I know it has been used ever since the bridge has been built across the Cat Point Creek.

Q. By the statement that the road has been used as a public road do I understand you to indicate that the road is entirely open and absolutely free from obstruction to travel, and is in fact used by the people at large at their pleasure?

A. It is used by the people at large at their pleasure as a public road. There are some gates on the farm of Mr. Waddington on the lower side of Cat Point Creek, and the same as I know to be public roads maintained by the County in the same neighborhood; the Court granted the owners the privilege of putting gates at certain points for convenience in their line fences, to prevent a double row of fences for lanes. In this particular case I don't remember what the action of the Court was in the matter of gates on the Waddington farm, but I know on the opposite side of the creek running from Warsaw to Newland's—in fact on both sides of Cat Point Creek, running from Warsaw to Newland's, there are as many as eight or ten gates on the farms there, and I inquired into the matter and found the Court allowed these gates to be put there upon certain conditions.

Plaintiff's counsel objects to the answer, as being irresponsive to the question, and also because it seeks to prove the records of the Court by oral testimony.

Q. Is there or not any gate or obstruction between the bridge over Cat Point Bridge and the shore end of Naylor's Creek?

A. The last time, and for several trips I have made there, there were none.

Q. Please state whether or not you are familiar with the village of Sharp's and the location of the wharf known as Sharp's Wharf?

A. I am.

Q. Please state whether or not Sharp's has been known formerly by any other name?

A. They called the village Milton.

Q. Please look at the paper now handed you marked Defendant's Exhibit "P," and say whether or not the signature purporting to be that of J. B. Raines, Clerk, is the genuine signature of Mr.

465 Raines, the Clerk, and whether or not the public road described in the order of which the paper purports to be a certified copy, leads to the shore end of Sharp's Wharf?

Plaintiff's counsel objects to the offering in evidence of Defendant's Exhibit "P," because the said order purports on its face to be as of a date subsequent to acquisition of Sharp's Wharf by the predecessors in title to the Weems Steamboat Company; and further because the said order does not purport on its face to be for a public road through the property of the Weems Steamboat Company, and further because it does not appear from the order that said order was ever carried out: and to the question, because it seeks to prove by the parol testimony of the witness the character of the road leading to Sharp's Wharf and because said order and said question are both immaterial and irrelevant.

A. This is the genuine signature of Mr. Raines, the Clerk. The road referred to is certainly a public road and maintained its full length by the County of Richmond to the shore end of the wharf.

Plaintiff's counsel objects to the answer, on the same grounds as set out in his objection to the question.

Q. Please state whether or not you have been accustomed to travel to Fredericksburg from time before the establishment of the present day schedule by the river boats, and since?

A. I have traveled the road very seldom altogether; it has been ordained in some way that I have had to make more trips recently. I have not averaged one trip a year, in the last eighteen years, until this spring I have been up the route, this is the third trip. Of course it is more convenient now than it was. It is a quicker trip; you are away from home a shorter length of time, and on the river a shorter length of time than before.

Q. Please state whether or not you have noticed any increase of travel and traffic on the river between your neighborhood and Fredericksburg since the establishment of the day boat service?

A. There has been a decided increase of both traffic and travel.

466 Cross-examination.

By Mr. WILLIAMS:

Q. As I understand the situation there have been two wharf structures at which is known as Wellford's Wharf; is that correct?

A. That is correct; on the same site through, both of them.

Q. When was the first one built?

A. I cannot remember the date.

Q. When was the second one built?

A. I can not recollect the date of the second either, but the second

one was not built by the same party who built the first. The ice carried the first structure away—the pier-head and ware-house, when Mr. Wellford owned it, and part of the roadway or bridge, and it remained down for some months before there was any effort to rebuild it. Mr. Wellford declined to rebuild it, but sold the privilege to H. T. Douglas, Jr., who built the wharf that is there now. I remember the facts. I don't remember whether Mr. Douglas signed as junior in any transfer of the property since—in fact I don't know whether his senior is dead.

Q. Do you know whether the road leading to Wellford's Wharf leads over the lands formerly belonging to Douglas and now to the Weems Steamboat Company, and that it actually goes to low water mark on the river shore?

—. I know that Douglas bought very little land on the shore end of the wharf; my impression is that it was two acres, and I can not say positively of course that the county worked through that but it is my impression it does. I have never heard of any distinction made between one part and the other on the entire road. It is dedicated as I stated, to Wellford's Wharf.

Q. Is not the property formerly owned by Douglas, the two acres on which the wharf is built, just a sandy shore?

A. It is a sandy shore; my impression is that no land above the sand beach was sold. There may have been, but I do not know it to be a fact. I don't think there was.

Q. What evidence is there of a road over that sandy beach immediately surrounding Wellford's Wharf?

A. Simply the fact that the road to the sand beach, to continue no further, would be of no interest or value to the public.

Q. I don't think you caught my question. (Question repeated.)

A. I answer, the fact that the road would not be of any public value to justify the maintenance of the distance that road is worked by the County to the sand beach, unless it did terminate at the end of the wharf. I think my answer was to the point.

467 Q. I may not have made myself clear; what I want to get at is, how would you know there was any road over the sandy beach immediately surrounding the shore end of Wellford's Wharf? Are there any evidences on either side, or is there any macadam in the road or is there anything which would tell you that there was a road, provided you could see beyond the sandy beach, or provided you did not know that there was a road extending up into the country.

A. Why, we can follow the wheel tracks to the end of the wharf, and immediately on entering the sand beach there is a sort of bog, which is cross-laid with logs, brush, &c., and firm earth tracked down on it. I am confident that it was done by the County.

Q. How far is that bog from the actual shore end of the wharf?

A. I should judge it might be from 40 to 50 yards.

Q. Then as I understand it, so far as the sand beach immediately surrounding Wellford's Wharf, the only tangible and apparent evidence that there is a road on that sand beach is the tracks over the same?

A. Well, there are many hundred yards of the same road between the shore end of Wellford's Wharf and Warsaw, or the public highway through the Neck from Fredericksburg to the Bay, that have no more evidence of being a public road than that sand beach has—just the same continuation of the road track—track of the vehicles—is the only evidence you can have of many yards of other roads, the same as that sand beach.

Q. Are you positive that the second wharf at Wellford's was built upon the exact location of the first wharf?

A. I am positive that it was built as near as possible to avoid obstructions of the old wreck. I can not remember whether there was any obstruction left by the old wreck. There was no material change of site, I am confident.

Q. Could there have been a change of ten or fifteen feet, one way or the other, without your appreciating it?

A. I don't think there was as much as ten feet either way, I mean in the clear, I mean by in the clear, ten feet space between the upper end of the old wharf and the lower edge of the present wharf, or vice versa; because it would have been very noticeable if there had been, and I am not aware of any real change.

Q. With reference to Naylor's, doesn't the road fork about two hundred yards from the wharf—one fork going to Warsaw, and the other to another section of the country—Newlands—up that way?

—. It is virtually a fork, the Warsaw road coming up from the lower bridge strikes the Newland's road at very nearly right angles, and verges into the continuation. The two continue on the wharf near Mark's barn; I should suppose it was all of two hundred
468 yards—probably more—where this junction of the two roads occurs.

Q. Where is Tappahannock ferry in reference to Naylor's Wharf?

A. Tappahannock ferry is slightly above, on the opposite side.

Q. How far is that from Naylor's Wharf?

A. I should judge from where the road leaves it must be all of a mile, or probably a little more than a mile from the ferry; possibly a mile and a half—more likely a mile and a quarter—from Tappahannock ferry.

Q. What is the character of the land belonging to the Weems Steamboat Company immediately surrounding the shore end of Sharp's Wharf?

A. I think there is about—for the last five or six yards going to the shore end of the wharf is flat, and to either side of the road is sandy, Mr. Sharp—his enclosure running down to within twelve feet of the lower side of the wharf—and the canning establishment, is on the upper side, and on the canning side it is very sandy. There is an offset—something of a terrace—where the bank has been graded down, so as to cover the little sand that same in between the shore end of the wharf and the bank.

Q. Is not immediately around the butt end of Sharp's Wharf a sandy beach?

A. I suppose it was a sandy beach before the road was graded down to the wharf—a very narrow place—it is scarcely more than room

for two vehicles to stand side by side between the foot of the incline and the shore end of the wharf. I have seen three wedged in there right closely when there was a scarcity of tying room for the horses.

Q. It the sand not right at the shore end of the wharf?

A. Well, all of that section of the country is more or less sandy down there. We have the heaviest, sandiest road up on the Ridge Road between Warsaw and Emmerton—much heavier than it is at the shore end of that wharf. There is not as much sand there as we meet with in many of our roads in the county.

Q. Is it not plain beach?

A. Well, it is built up around there so there is no beach there. It is all built over. There is barely drive room between the terrace or bank and the canning house on the lower side, and there is no drive-way on the upper side. Mr. Sharpe has a boat house which touches the wharf on the lower side, and his fence touches the corner of his boat house.

Q. But right immediately in front of the shore end of the wharf and between Mr. Sharp's fence on one side and the canning factory on the other?

A. Well, I guess if I were going to plant a crop of corn there I would call it sandy.

469 Q. And are not the evidences of a road being there simply the tracks of the wagons in the sand?

A. The same evidence that there is at my lane. I don't see any difference in the evidence of the roads, except that it is in better order at the foot of the wharf than it has been for several hundred yards in that lane.

Q. If you were just sat down on that particular spot, and everything wiped out, how would you know that was a road?

A. As soon as the vehicles rise that little ascent at the foot of the wharf, some drive to one side and some to the other, to the different stores, or to tie their horses and get a little shade. There is a little break in the appearance of the road between Mr. Sharp's building and the last store building on the opposite side going towards the wharf.

Q. The Weems Steamboat Company has a little property there at Sharp's Wharf consisting of beach, has it not?

A. I really don't know sir. I suppose of course it must own the landing end of the wharf, but I don't know how far it extends because it is a fact that I don't know whether it belongs to Mr. Kriete or Mr. Eli Sharp. There ics only a short board-walk laid from the wharf into the factory door, and on the opposite side above Mr. Sharp has his boat house. I don't know—that may be Weems Company property too, and the narrow space between the roadway and the back fence to his private lot—I don't know whether he has put his fence on the Weems property, or not.

NOTE.—At this point the further taking of these depositions was adjourned and continued till to-morrow (Thursday) morning, Augt. 27, 1903, at 10:30 o'clock.

470 COURT HOUSE, FREDERICKSBURG, VA.,
THURSDAY, *August* 27, 1903.

The further taking of these depositions were resumed at 10:30 o'clock this morning, pursuant to adjournment of yesterday.

Present: William D. Carter, Esq., for defendant; George Weems Williams, Esq., for plaintiff.

Dr. A. C. FISHER, resumed the stand as a witness for defendant:

By the SPECIAL MASTER:

Q. What opportunities have you had for observing the character of the wharf, and the road or roads leading at Wellford's?

A. Well, I have practiced medicine in that neighborhood for a good many years, and have had to pass immediately by the wharf in going up and down that river shore in getting from one place to another, and sometimes, as I think I remarked last night, I don't remember—when there is a boat coming up the river and I am pressed for time I can leave home later and go up to Wellford's and catch it, then I can go down to Sharp's. Sharp's is considerably down from my place, and Wellford's is considerably up, and sometimes I would get off at Wellford's for the purpose of getting on land sooner and getting to work, with my vehicle. I have had many occasions for being there.

Q. How often according to your recollection, do you go or pass by Wellford's Wharf, on an average, during a year?

A. It is very irregular. Last winter I was there oftener than usual, on account of attending a quarantine there—small pox—just below the wharf, seeing about provisions and so on, mail and such matters, and this spring and summer I have occasion to take and leave the boat there quite frequently—probably seven or eight times since spring. I can not remember the times—I could count it up. I have taken the boat there three times, and left the boat there three times, since the first of April.

Q. Do you remember when Wellford's Wharf was first established?

A. I remember the circumstances, but not the date. I remember distinctly when it was under discussion. I think young Captain Gurl was sent in there to sound the water and decide whether it would be worth while to build the wharf. I can not remember the dates.

471 Q. Do you remember when the road mentioned in Exhibit "N," about which you have testified, was opened?

A. I can not remember the date. It has been open now—well, I would hesitate to say exactly how long; it has been open for five years, I am confident—considerably over—but I can not remember the date.

Q. The copy of the order, being Exhibit "N," referred to, is dated in July, 1890. Have you any recollection as to how long after that time the road was opened?

A. I have a distinct recollection that it was a shorter time than it usually takes the people in my county to do a thing of that sort. They went to work very promptly. It was a very short time after

the notice of that order being issued by the Court before I travelled over the new road established to the wharf. I can not remember how many weeks or months, but I am satisfied it was within six months after that order—that is my impression.

Q. Now, then, according to your statement, considered in connection with the date of this order, the road has been opened about thirteen years?

A. According to that date, certainly, but of my memory I would not depend upon it accurately. I would take that as the correct date.

Q. Have you any reason to believe, other than by reference to the date of this order, that the road was opened soon after this order was entered.

A. Just as I said—that it was reasonably short time after I knew of this order being issued that I was up in that neighborhood and passed over the new road. It was established according to that order. I can not remember the exact time—it may have been six months, or possibly seven—but within twelve surely.

Q. Was the wharf already established when this new road was opened?

A. The public road—yes; I can not say how long, because I can not remember the dates.

Q. How long had the wharf been built when this new road was opened?

A. I can not remember. I know that the public road was built after the wharf was established. The length of time it was established I don't know, because I only travelled over the road then in my practice. I did not have any occasion to take the boat there then.

Q. Did the new road run directly to the shore end of the wharf, as then built?

A. Well, with a curve—directly—there was no branching off, or anything of the sort, to get there. There was a slight curve. The road ran very nearly—I suppose over a quarter of a mile—nearly parallel with the river, and then curved down to the shore end of the wharf—curved just opposite the wharf, into the river.

472 Q. In opening this new road was it necessary to alter the road that had formerly run to the wharf—if one did run to the wharf?

A. I don't think it altered the wharf-end road at all. Whether there was any work done upon it at all to put it in order, I suppose not. It was a sand beach immediately at the wharf.

Q. Do you know whether or not Wellford's Wharf has been rebuilt since originally constructed?

A. I do.

Q. Has the shore end of the wharf been placed at a different point on the shore line, to your knowledge, after it was rebuilt?

A. I can not be sure about it. I am confident there is no great diversion from the old site at the shore end, from the fact that the old broken pilings would be very noticeable if they were off a little distance to the side. I suppose there was some slight diversion. The whole roadway was not destroyed by the ice—but how much, I

can not say. The pier-head was carried away by this ice drift. My impression is that the roadway is about the same. The ice lifted a great many piles under the roadway, and there is a curve up and down in the roadway of the wharf on account of the piles being lifted by the ice. Now whether that has occurred in some winter since, I don't know.

Q. Am I to understand from your answer that you are unable to tell whether the point of termination on the shore of the present wharf, is the same as the point of termination of the former wharf or wharves?

A. I was unable to say positively whether it *as* identically the same terminus on the shore, or not. I think it is, but I can not be positive.

Q. Will you please look at this plat, which has been filed by the plaintiff, marked Exhibit No. 11," and state whether or not, according to your knowledge, it is a correct diagram and pictorial description of Wellford's Wharf to the shore end thereof?

A. I don't know what scale this is made to, but it puts this canning factory very high up the shore.

Q. The canning factory is not in dispute and has no bearing particularly upon our investigation. I am speaking now more particularly about the road and the wharf.

A. As far as I can see it is very nearly accurate. You see there is no starting point here for me. I can see that the general curve of the river shore is about correct, according to my recollection. I simply refer to that from the fact that the factory is right close into the beach above the road.

Q. Topographically is there anything to indicate that the terminus of the road on the shore line does not correspond with the terminus of the end of the wharf on the shore line?

A. It is impossible to state that this is incorrect——

473 Q. One moment—I do not mean from looking at the map, but topographically—looking at the situation if you were there?

A. Certainly, except that this is a clearer outline of the road-way than you could possibly have on that sand beach. This would appear to join the lower side of the road bed, with an incline to go up on the wharf there, or the steps, as they are pictured here, and leaving the wharf roadway entirely itself below the road. Now my impression is that the drive-way is up to that platform for convenience, and there is an open sand beach and nothing to define the exact limits of the road. I think that is what Mr. Williams wanted last night in asking so many questions about the road there. It is a sand beach there—there is no question about that, and the tracks may be there to-day and away to-morrow, but my impression is that before coming to the store house it is in a direct line with the wharf-way or bridge.

Q. Now state as concisely as you can, please, what opportunities you have had for observing the character, situation and surroundings of Naylor's Wharf?

A. Well, sir, I have practiced for fifteen or sixteen years for Mr.

Dennett Marks—I think he is the owner of the wharf; I don't know whether he is or not—right at Naylor's, and I use that road as far as his barn, about two hundred or a little more yards from the wharf to travel from the upper part of my county and back, at times, according to the patients I had on the route.

Q. About how often, on the average, have you been to Naylor's wharf, say in the least ten years, per year?

A. Possibly not more than twice a year, that is, on an average—strictly on the wharf—twice a year.

Q. The date of the order of the County Court opening, or accepting the dedication of certain roads—among them one purporting to lead from Naylor's Wharf—heretofore exhibited by the defendant marked Exhibit "O," about which you testified yesterday evening, is June 1887. What knowledge, or means of knowledge have you for knowing whether or not this road, or these roads, were ever opened or used by the public?

A. Simply the fact that I have used it myself, and I know that repairs have been put on it by the County. I have seen the contractors at work on portions of it. As I stated last night, I have never seen any work done between Marks' barn and the wharf proper.

Q. Will you please look at this plat, purporting to be a plat of Naylor's Wharf property, heretofore exhibited by the plaintiff, marked Exhibit No. 10, and state whether or not to your knowledge it is a correct pictorial description of the wharf at that point,
474 with particular reference to the wharf property itself and the road leading thereto?

A. Well, this takes in certainly the portion of the road in question, from where the Newland's road and the Cat Point Bridge road come together. So much of the road as is shown is correct.

Q. Do you know whether or not the road as there shown is the same road mentioned in the said order as being a "road from said bridge to Naylor's Wharf?

A. If the plat shows any of the road referred to in that order it is a very small portion of it.

Q. Is there any other road directly to the Foot of Naylor's Wharf, except the one shown in this plat; or has there ever been any other road?

A. I have never known any other.

Q. Is it possible to drive from Cat Point Bridge, at the mouth of the creek, directly to the foot of Naylor's Wharf, over any other road?

A. That is the only road possible to get to the foot of the wharf by, from the bridge.

Q. Referring again to the plat, does all of the road shown on that plat run through Mr. Marks' land?

A. Yes, sir, it does.

Q. Referring now to defendant's Exhibit "P," about which you testified last night, please state whether or not the wharf called "Union Wharf" is the same as the wharf now called "Milton" or "Sharp's" Wharf?

A. No, sir; the wharf called Union Wharf was known inter-

changeably as Union, or West View Wharf—know by two names. It was used as a wharf—I don't know from what date. When I was a child I went to live in the Northern Neck and had to get off the boat at Union Wharf—it was the only wharf then on the northern side at my end of the county. It was abandoned many years before Sharp's Wharf was built. I suppose it is about a mile and a quarter, shore line, from old West View or Union Wharf site, down to where Sharp's Wharf now stands.

Q. Will you say whether or not the County has ever taken charge of the road leading from a prong two hundred yards from the shore end of Naylor's Wharf, to said Naylor's Wharf, which you have testified runs over the land of Marks?

A. I can not say whether the County has done so or not, that portion.

Q. Was Naylor's Wharf built prior to the date of that order in 1887?

A. I don't know it to be a fact, but I think it was. I don't think any of those roads were taken charge of by the County of Richmond until after the wharves were established.

And further this deponent saith not.

A. C. FISHER.

NOTE.—By agreement between parties, by counsel, the signature of this witness is waived.

475 S. E. FOSTER, another witness on behalf of the defendant, first duly sworn, testified as follows:

By Mr. CARTER:

Q. Please state where you reside?

A. I reside on lower Main Street just on the hill from the Weems Line Wharf.

Q. Please state what business you are in in Fredericksburg?

A. I am in the mercantile business, and also building material.

Q. Please state whether or not your residence is very near the wharf of the Weems Line boats in Fredericksburg?

A. Yes, sir, not over two hundred yards—just up on the hill.

Q. Immediately above the wharf?

A. Yes, sir.

Q. Please state if you know the usual time of arrival of the Weems Boats from Baltimore—I mean the actual arrival?

A. That would be very hard to state; they come in on Saturday nights—they very seldom come in until Sunday morning, or may be after midnight. Wednesdays just about the same. I don't know any material difference.

Q. Please state *where* or not you have noticed any increase in business with the people of the section of the country along the river below Fredericksburg, since the establishment of the day boat service?

A. Yes, sir. Our business along the river has increased over 100%. We have a new trade down there that we never had before.

(Cross-examination declined.)

And further this deponent saith not.

S. E. FOSTER.

By agreement the signature of the witness is waived.

CHARLES D. FOSTER, another witness on behalf of the defendant, first duly sworn, deposes as follows:

By Mr. CARTER:

Q. Please state where you reside, and your profession or business?

A. I reside on lower Main Street in Fredericksburg, on the hill directly opposite to the Weems Steamboat wharf, a distance of between one hundred and fifty and two hundred yards.

Q. Please state your business or profession?

A. My business is that of a practicing lawyer.

476 Q. Please state whether or not there is any other house or building between your dwelling and the warehouse of the Weems Steamboat Company on their wharf?

A. None at all; nothing to obscure the view at all.

Q. Please state if you know what is the usual time of the actual arrival in Fredericksburg of the Weems Line steamers from Baltimore?

A. They seem to have no usual time at all. The actual arrival varies. The Saturday night boats very frequently never gets in until Sunday morning. The Wednesday night's boat the same way. On last night the steamer "Lancaster" which was due here last night arrived this morning.

Q. Please state whether or not you are frequently awaken- by the incoming of the boats?

—. Yes sir, I am very often disturbed in the small hours of the morning by the arrival of the steamers.

Q. Please state if you know whether or not Port Royal has ever been incorporated as a town?

Plaintiff's counsel objects to this question, because the fact of incorporation of the town can not be proved by parol testimony.

A. Yes sir, I had occasion to search into the records yesterday, and in Henning's Statutes-at-Large I found that the town was incorporated between the years 1735 and 1745. I don't remember the exact date of the charter of incorporation.

Plaintiff's counsel makes same objection to the answer as to the question.

Q. Please look at the memorandum now handed you marked Defendant's Exhibit "G," and then state if you can in what years, and the pager — reference, the Town of Port Royal was incorporated?

—. 1738, page 228 of volume 5, Henning's Statutes-at-large.

Q. Please state whether or not there is a copy of Henning's Statutes available in Fredericksburg?

A. Not to my knowledge, sir. I searched for a copy without avail.

Q. Please state where you did secure inspection of a copy?

A. In the Clerk's Office of the County Court of Caroline.

Q. Please look at the paper now handed you, marked Defendant's Exhibit "Q," and say whether or not the same, including the plat, is a correct copy of the record in the office of the Clerk of the County Court of Caroline; whether you compared the same with the plat there, and whether or not the signature of Mr. Coghill, the Clerk, to the said paper, is the genuine signature of the said Clerk?

477 —. Yes sir, I compared this with the record there, and read it in the presence of the Clerk who signed it in my presence.

Q. Please state whether or not the language of that deed indicates a belief on the part of the parties that the wharf mentioned in the said deed was not entirely within the bounds of the parcel of land and the appurtenant riparian rights of the said parcel of land, but that the wharf encroached upon the public street and on other property?

Plaintiff's counsel objects, because the construction of a deed is a matter of law, and not of expert testimony, or any other kind of testimony.

A. From the language of the deed I would infer that it did indicate that the wharf did encroach upon the land of private individuals, or upon some public property, from the simple fact that it made provisions against it in this deed.

Plaintiff's counsel makes same objection to the answer as to the question.

Q. Please state whether or not in the said deed reservations of the use of the wharf purporting to be conveyed by the said deed were made, and guarantees to the vendee against the use of the wharf by other parties without compensation?

Plaintiff's counsel makes same objection to the answer as deed is not a matter for expert or parol testimony of any kind.

A. Yes sir, there is provisions of indemnity and remuneration in case the property is used by parties other than the grantee.

Plaintiff's counsel makes same objection to the answer as to the question.

Cross-examination.

By Mr. WILLIAMS:

Q. You don't know whether or not that wharf structure, as it is portrayed in the plat, included in the deed which you have just testified to, is the same wharf structure as that now existing?

A. No sir, I can not say.

And further this deponent saith not.

CHARLED D. FOSTER.

NOTE.—By agreement between the parties, by counsel, the signature of the witness is waived.

478 J. P. COLBERT, another witness on behalf of the defendant, first sworn, deposed as follows:

By Mr. CARTER:

Q. Please state where you reside and whether or not you have been for sometime engaged in the business of manufacturing ice and handling oysters?

A. I have been in Fredericksburg since '82—21 years next month, and I have been in the ice business, this in my third summer, and the oyster business I have been in—I don't know exactly, but I think five or six years. I commenced the saloon business I think in '95, and I commenced the oyster business a year or two later, I think in '97, and used quite a number of oysters, and was really in the wholesale oyster business and supplying, if not the entire, the greater portion of Fredericksburg. If you want to know anything about freight rates, I can tell you about those.

Q. Please state whether or not prior to the establishment of the day boat service on the Rappahannock by the People's Steamboat Company, you asked the Weems Steamboat Company, through their agent, Mr. Scott, for a concession or reduction in the freight rate on your oysters to Fredericksburg?

Plaintiff's counsel objects to this question as immaterial and irrelevant.

A. I applied to Mr. Scott, in consideration of the number of barrels of oysters which I used—it was quite a large number—to give me a concession either at the time, or a rebate at the end of the season, of five cents a barrel. I thought the amount I was paying was a little large; I was paying 30c. for sugar barrels, and 25c. for flour barrels. He said he would take the matter up with the Company, and would let me know later. I went to see him later and he declined, and in such a way that I did not like it very much—he said if I did not sell the oysters some one else would sell them; that they would be brought here all the same, at any rate.

Plaintiff's counsel objects to the answer for the same reasons as assigned in his objection to the question.

Q. Please state whether or not Mr. Scott interviewed you again on the subject of freight rates on oysters, after the establishment of the day service by the People Line?

Objected to by plaintiff's counsel as irrelevant and immaterial.

479 A. Why certainly, he interviewed me and offered me the cut rate of 25 cents per barrel, the same as was being offered by the other line.

Plaintiff's counsel makes same objection to the answer.

Q. Please state whether or not another day boat was afterwards put on the run between Fredericksburg and Urbanna by the Weems Line, and if yea, give the name of the boat?

A. Yes, the "Caroline" was put on.

Q. Please state what freight rates the Weems Line offered to *five* you on your oysters then?

Objected to by plaintiff's counsel as irrelevant and immaterial.

(No answer in original.)

Plaintiff's counsel makes same objection to the answer as to the question.

Q. Please state whether or not you then shipped by the "Caroline?"

A. I did not; I shipped by the "Tourist."

Q. Why did you ship by the "Tourist?"

Objected to by plaintiff's counsel as irrelevant and immaterial.

A. Well, I shipped by the "Tourist- because I preferred to; it had given me better freight rates than the Weems had given me before.

A. It was put on by the people, and if they did not patronize the Peoples' boat the freight rate would soon be as high as or higher than it had been before.

(Cross-examination declined.)

And further this deponent saith not.

J. P. COLBERT.

NOTE.—By agreement between the parties, by counsel, the signature of the witness is waived.

480 M. B. ROWE, another witness on behalf of Defendant, first duly sworn, deposes as follows:

By Mr. CARTER:

Q. Please state your place of residence and where you do business?

A. I live just outside of the corporate limits of Fredericksburg.

Q. Are you in business in Fredericksburg?

A. Yes sir.

Q. Please state whether or not there is an organization in Fredericksburg known as the Business Men's Association?

A. Yes sir.

Q. Please state if you are a member of that body?

A. Yes sir, I am President of that body at this time.

Q. Please state whether or not as president of the Business Men's Association you have taken note of the effect upon the general business of Fredericksburg, incident to the establishment of a day boat service between Fredericksburg and Rappahannock River points?

A. Yes, sir, I have. It is a matter of discussion with the members of that association every meeting night, as to the improvement in that line—the business line—by the running of these river boats.

We all know that the merchants have felt that it has benefitted the town very greatly.

(Cross-examination declined.)

And further this deponent saith not.

M. B. ROWE.

(Signature waived by agreement.)

Note.

It is agreed between counsel for the plaintiff and the defendant, respectively, that in order to save time the defendant shall not introduce and place upon the stand a number of witnesses representing ninety-five per cent. of the business interests of Fredericksburg, and whose statements it is admitted by counsel for the plaintiff shall be considered as made, to the same effect as the statements of M. B. Rowe and C. W. Jones; and said statements shall be considered as in evidence subject to the same exception or exceptions which might be available to the plaintiff in connection with the testimony of M. B. Rowe and C. W. Jones aforesaid.

A recess was here taken until 7:30 P. M.

481 G. E. FARISH, another witness on behalf of the defendant, first duly sworn, deposes as follows:

By Mr. CARTER:

Q. Please state where you reside?

A. I live about a mile or mile and quarter of Port Royal—maybe a mile and a half.

Q. Please state what your business or occupation may be?

A. Farmer.

Q. Please state whether or not you are often in Port Royal, and familiar with the place?

A. Yes sir, I am there, sometimes every day, sometimes two or three times a week only.

Q. Please state whether or not as a farmer you are accustomed to ship grain from time to time?

A. I seldom ever ship any quantity of grain—I sometimes ship with Mr. Powers, who is a merchant and farmer there. He orders a vessel there and I sometimes ship along with him.

Q. Please state whether or not at any time in making such shipments of grain, your grain has been loaded on vessels over Port Royal wharf?

A. Yes, sir, on one occasion I shipped with Mr. Powers grain over that wharf.

Q. Please state as near as you can remember, the year in which you made the shipment you allude to?

A. I think it was '96 or '97—I can not say positively now; I do not remember.

Q. Please state whether or not any charges *was* made against you for wharfage for loading the grain over Port Royal wharf?

A. Yes, sir, the charge was I think thirty cents per one hundred bushels. I am not sure as to the amount, but to the best of my memory I think it was thirty cents per one hundred bushels.

Q. Please state whether or not there is a ferry at Port Royal?

A. Yes, sir.

Q. Please state where the ferry boat lands at Port Royal?

A. It lands between the end of the wharf now and the street below; it don't land at any particular spot; sometimes it lands fifteen or twenty yards further; but the whole landing covers the whole width of the block there, which is I suppose seventy or eighty yards.

Q. Do I understand you to mean that the landing is anywhere between the place where two streets coming down to the river touch the wharf?

A. There is one street, if you will remember, runs right down to where this bridge, or whatever you might term it, leads out to the warehouse, and the ferry landing is between the end of the
482 wharf, on the end of that street and the street below—I suppose a little more than middle-way. Now the ferry landing proper—I don't know, they may have a certain place that is designated as the ferry landing, but they land all along there, just according to how the tide is; they don't land in any particular spot every time.

Q. Then it is or not a fact that the space you speak of is used by the public at their pleasure, along the river shore, in front of Port Royal?

A. Yes, all between these two streets I speak of. Powers has a granary there that covers 30 or 40 feet, right on the corner of this street, and at high water mark, I reckon. Right between this granary and the store below is where the ferry lands nearly every time.

Q. Has or not the ferry in former years made frequent landings above the wharf, between the shore end of the wharf bridge and the street above?

A. Between the end of these wharves—do you mean has it ever landed above where the wharf touches the shore?

Q. Yes.

A. I don't remember much about that; I have been living in that country since '86, and I don't think—it may land there sometimes, but in the past few years, I don't think it lands there very often. It is much more convenient to go to the other place. I may have crossed there, but I do not remember ever landing above the wharf.

Q. Who is the man in charge of the ferry at Port Royal at present?

A. Mr. Gibbs.

Q. How long has Mr. Gibbs been in charge of the ferry?

A. I don't know. He has been there for some eight or ten years, I imagine. May be longer than that.

Q. Is there or not any obstruction in passing along the river shore from the street which come to the river just below the wharf, to the street which comes to the river above the wharf?

A. No, sir, I don't think there is any. There is no lumber or ties or anything landed between those two streets. There is sometimes. I have known it years ago, a little lot, considerably—I sup-

pose 30 or 40 yards from the river, claimed to be owned by Mr. Thornton down there, that they used to pile ties on.

Q. Is it or not a fact that people coming to the steamboat wharf can drive, and do drive along the river there, past the end of the wharf, from street to street?

A. Yes, sir.

483 Cross-examination.

By Mr. WILLIAMS:

Q. You say that you shipped grain on one occasion from Port Royal wharf with Mr. Powers?

A. Yes, sir.

Q. Who did you pay the thirty cents per hundred to?

A. To Mr. Powers. I don't know that it was thirty cents, but I think that it was the amount, as well as I remember. I paid it to him.

Q. Do you know of your own knowledge that Mr. Powers paid any of that money you paid to him, to the Weems Steamboat Company, or its agents?

A. No, sir, I do not.

Q. Do you know whether Mr. Powers got the consent of the Weems Steamboat Company to have that vessel landed there to get the grain?

A. No, sir, I do not know anything about that.

Q. How many bushels did you ship?

A. Two or three hundred—something like that; it might have been four or five. Not more than that.

Q. You say that the ferry has no particular place to land along the shore there?

A. No, I suppose somewhere in that fifty yards; it has no particular spot to land.

And further this deponent saith not.

G. E. FARISH.

NOTE.—By agreement between the parties, by counsel, signature to the deposition of the witness is waived.

G. B. FARISH, another witness on behalf of the defendant, first duly sworn, testified as follows:

By Mr. CARTER:

Q. Where do you reside?

A. About a mile from Port Royal.

Q. Please state what may be your business or occupation?

A. Farmer.

Q. Please state if you are often in Port Royal, and familiar with the town?

A. Yes, sir, I am there every day or two, and very familiar with the place.

Q. Please state whether or not you have ever shipped grain by vessel over the wharf at Port Royal?

A. Yes, sir, I shipped three or four hundred bushels of grain about '96 or '97—shipped it in a lot with Mr. Powers. He
484 had a lot of grain—not enough to load a vessel, and he asked me if I would let mine go along, of course in his name, and I was to get just what it netted, and when I settled with him he remarked "of course you will have to pay the wharfage"—which as well as I remember was thirty cents an hundred.

Q. Did you in fact pay that charge, or was it deducted in your settlement?

A. It was deducted in my settlement.

Q. With the statement that it was to pay the wharfage?

A. Yes, sir.

Cross-examination.

By Mr. WILLIAMS:

Q. You do not know what arrangement Mr. Powers had with the Weems Steamboat Company do you?

A. I do not.

Q. Do you know whether he turned over that thirty cents to the Weems Steamboat Company, or its agent?

A. I do not.

And further this deponent saith not.

G. B. FARISH.

NOTE.—By agreement between the parties, by counsel, the signature of the witness is waived.

J. A. TURNER, another witness on behalf of the defendant, first duly sworn, testified as follows:

By Mr. CARTER:

Q. Please state where you reside?

A. Fredericksburg, Va.

Q. And in what business or profession you have been engaged until recently, for some years past?

A. I have been a shoe salesman on the road—traveling salesman.

Q. Will you please state what territory you principally spent your time in?

A. Well, through the Northern Neck and the south side of the Rappahannock.

Q. Please state approximately how long you were engaged in this business?

A. I have been on the road about thirteen or fourteen years—I have been in the shoe business thirty-seven years.

Q. Do I understand you to state that for thirteen or fourteen years you have been constantly traveling the territory adjacent to the Rappahannock river?

485 A. No, not that many years. I have been traveling that country for seven or eight years.

Q. Please state whether or not while you were traveling as a sales-

man through the territory on both sides of the Rappahannock river you became to any degree familiar with the country?

A. Pretty well, sir.

Q. Please state whether or not you have frequently traveled back and forth on the steamboats plying the Rappahannock?

A. That has been my mode of traveling, sir—hiring teams when I would get to my destination and take the country up and come back to the river, and cross and re-cross the river.

Q. Please state whether or not you have from time to time visited most of the wharves on the Rappahannock river between Fredericksburg and Urbanna?

A. I have visited the most of them—some of them I have not gotten off at.

Q. Please state whether or not you have ever taken or left the boat at Monaskon wharf?

A. I have been ashore on Monaskon wharf—that is owned by Col. Farinholt. I have talked to him about the wharf. I have not taken a trip through the country from Monaskon wharf.

Q. Please state whether or not you have been on and off at Bayport wharf?

A. I have, sir.

Q. Please state how frequently?

A. My memory don't serve me how often I have off there, but I have taken that outlying country there and traveled it frequently—but how often I can not say.

Q. Please state whether or not you have at times traveled from Bayport out by Jamaica in the direction of Saluda, and if you are familiar with the roads in that direction from Bayport?

A. Yes, there is a public road leading from there to Jamaica?

Plaintiff's counsel objects to this answer for the reason that it is not responsive to the question; and further because it seeks to prove the character of a road by parol testimony.

Q. Please state whether or not there is a grist mill in the vicinity of Bayport?

A. There is, sir.

Q. Please state whether or not you have passed the grist mill?

A. I have, sir.

Q. How far is the grist mill from Bayport wharf?

A. My memory don't serve me on that, Mr. Carter.

By SPECIAL MASTER:

Q. Just approximate it, Mr. Turner?

A. It is a short distance; I would not like to say whether it was a mile or mile and a half, or two miles. I could not say.

486 Q. Please state whether or not you have traveled from Bayport in any other direction, or come to Bayport from any other direction?

A. No, sir.

Q. Please state whether or not there is another road by Owen Hill and Laneview which leads to Bayport?

A. I think there is, sir. I am positive there is. I have been to Owen Hill often.

Q. Please state whether or not you have ever taken or left the boat at Waterview?

A. No, sir, never have.

Q. Please state whether or not you have ever taken or left the steamer at Whealton's?

A. Yes, sir, frequently: that is my old camping ground.

Q. Please state whether or not there is a settlement at Whealton's?

A. Yes, sir—I judge in population 250 or 300 people there.

Q. Is or not the place laid off with streets?

A. Yes, sir.

Q. Please describe as near as you can with reference to any streets, the wharf structure at Whealton's?

A. As you come off the wharf there is a road that leads right straight out to Litwalton, and there is a road that bears down to the right, that leads down to Coleman's place of business on the beach.

Q. Do these two roads go immediately to the shore end of the wharf?

A. No, the road that bears to the right, that lead down to Coleman's place of business, is up the main road, I judge 150 or 200 yards from the wharf.

Q. Will you please look at the plat handed you marked plaintiff's Exhibit No. 8, and state whether or not it is an approximately correct representation of the situation of the wharf at Whealton's?

A. It looks like a pretty accurate map of it.

Q. I note upon the plat red lines with memorandum as follows: "Tulls house. Dr. Lewis." Will you please state whether or not there are buildings at or near the points indicated?

A. I can tell you better with my tongue. Tull's place of business is right near the entrance to the wharf, and he has a row of buildings for his hands, leading down to the wharf, abutting up almost to the wharf, a very little distance from the wharf. Whelton's place of business, store, is on the left hand side as you come off the wharf.

Q. Have you or not traveled from Whealton's back into the adjacent country?

A. Oh, yes, sir.

Q. Will you please look at the paper now handed you marked Defendant's Exhibit "R," and state whether or not you recognize from the description the road referred to?

Plaintiff's Counsel objects to the question because the description in the exhibit is so meager that it would be impos-
487 sible for the witness to recognize any road from that description, and because the exhibit in question is immaterial and irrelevant.

A. There is a public road from Whealton out there—I don't know anything about this paper—but I know it is a public road and I have the freedom as much as any citizen of Virginia to travel it.

Plaintiff's counsel objects to the answer because it is not responsive to the question, and because it seeks to prove by parol testi-

mony the character of a road; and also for the same reasons as those assigned to the question.

Q. Is there or not a public road leading up and down the Northern Neck a short distance inland from Whealton's wharf?

Plaintiff's counsel objects to the question because it seeks to prove the character of the road by parol testimony; and also because it is irrelevant and immaterial.

A. You can go from Whealton to Litwalton, down to the Corotoman river.

Q. Please state whether or not there is a road through the Northern Neck approximately parallel with the Rappahannock river which passes some distance inland from Whealton's?

A. Yes, sir.

Q. Please state whether or not the road which you have already testified about, leading from Whealton's wharf as shown on the plat you have examined, intersects the road running up and down the Northern Neck?

A. It does, sir.

Q. How far from Whealton does the Whealton wharf road intersect the road running up and down?

A. From Whealton to Litwalton, I think, they call it six miles, sir.

Q. (Question repeated.)

A. If you have reference to the Ridge Road, sir, about six miles, sir, I would say.

Q. Is there not another road passing Whealton which goes down in the vicinity of Molusk?

A. I just answered that question a few moments ago.

Q. Between what you call the Ridge road and the Rappahannock river.

A. I just answered that question previous to this one. I told you there was a road that you had to go up to Litwalton before you took that road, on account of the creek makes up, that road brings you down to Molusk and there you cross, take the ferry, and it brings you out to another road to Merry Point.

Plaintiff's Counsel objects to the answer in so far as it seeks to establish the character of the road by parol testimony.

488 Q. Please state whether or not there — any stores along the road you have last spoken about, which you would pass in traveling from Whealton in the direction of Litwalton and Molusk?

A. There is no store upon the road from Whealton until you get to Litwalton.

Q. Please state whether or not you made sales at Litwalton to stores there?

A. I have.

Q. Please state what the route by which the orders you took were filled when the goods were shipped?

A. By the Weems Line of steamers to Whealton's wharf, for that section.

Q. And from the wharf how were the goods transported to the stores?

A. By vehicles and wagons they were hauled from the wharf up to the respective stores. The merchants there have their own teams.

Q. By the roads?

A. Yes, sir, by that road.

Q. Please state as near as you can the population of Litwalton?

A. Oh, I judge fifty or seventy-five people would cover the number that live there, but there is a right thick settlement lying back from there.

Q. Please state whether or not you have taken or left the Steamers at Sharp's?

A. My memory serves me as getting off at Sharp's once to go up to Emmerton—only once.

Q. Please state whether or not you have taken or left the steamer at Bowler's?

A. Very frequently, sir.

Q. Please state what points you would reach conveniently from Bowler's, in your journey as a traveling salesman in that vicinity?

A. Two and a half miles from Bowler's you come to Santa Cross, quite a village, four or five stores there.

Q. Have you or not made sales or taken orders from merchants at Santa Cross?

A. I have, sir—from Clarkson, the biggest merchant there.

Q. Please state what is the shipping point for Santa Cross?

A. Bowler's.

Q. Please state the character of the settlement of the country in the vicinity of Bowler's and Santa Cross?

A. It is pretty thickly settled in that section. Very thickly settled.

Q. Please state if you know of a place in that part of the country locally known as Byrd's Bridge?

A. No, sir, I don't know it by that name, sir.

Q. Please state whether or not you know a place in that vicinity called Hollow Chestnut, or Ino?

A. No, sir, I may have been to that place, or to both of them, but don't know them by those names.

Q. Please state whether or not you visited any points in any other county than that in which Bowler's and Santa Cross are located, in traveling the country back of Bowler's wharf?

489 A. Not at that point—at Bowler's I have not. There is a trade comes there from King & Queen; you can see King & Queen County from the Ridge Road there, but I have never been back in that section, but I have been back from Tappahannock in that section.

Q. Do I understand you to state that the road from Bowler's to Santa Cross, and beyond Santa Cross, leads into a section of King & Queen, and that the shipping point is Bowler's?

A. Yes, sir.

Q. Please state whether or not you have ever visited Ware's wharf?

A. I have only been on it from the steamer. I have always gotten down to Dunnsville by the way of Tappahannock, by teams.

Q. Please state if you know what is the shipping point for Dunnsville?

A. Ware's wharf.

Q. Please state the approximate population of Dunnsville, and state the comparative settlement of the surrounding country?

A. From Tappahannock to Dunnsville, six miles, you pass through a pretty thick settlement; in fact you are hardly out of sight of a house. Around Dunnsville it is pretty thickly settled—four or five good stores there doing a prosperous business.

Q. Do you know of any other industries carried on at Dunnsville?

A. There is a large canning factory there. It was owned and run by Mr. Kriete. I think his son now conducts it.

Q. Have you or not ever taken the boat or left the boat on any of your trips out to Wellford's wharf?

A. Frequently, sir.

Q. Are you or not familiar with the location and surroundings of Wellford's wharf?

A. As well as I know my own home.

Q. Will you please describe Wellford's wharf with reference to the roads, if any?

A. As you come off the wharf, on the right hand side, the agent has a dwelling there, pretty closely surrounded by a sand beach. His name is Suttle, I think. On the right hand side there is a little creek makes up—I don't know by what name and there is a portion of that road, until you strike the high point of it, is corduroy, so that the teams can come down on the beach to the wharf.

Q. Does or not the corduroy which you speak of go immediately to the shore end of the wharf?

A. Not close to the shore, no, sir; it don't come quite up to Mr. Suttle's dwelling.

Q. Is the direction of the corduroy, if it were continued, such as would bring you directly on the wharf?

A. Yes, it would bring you right to the wharf, if continued.

Q. Will you please state what point of commercial im-
490 portance you are accustomed to reach from Wellford's?

A. You go into a very prosperous country; you get to the county seat of Richmond County seven miles from Wellford's—Warsaw—and from Wellford's you can go up to Emmerton, another section thickly settled through there. It is just about, I would say, the same distance.

Q. Please state if you know what scope of country uses Wellford's wharf as its shipping point?

A. Well, that section lying around from Warsaw.

Q. Just state how many miles?

A. I could not say how far back. I have sold goods back to a place called the Village, and Wellford's wharf was the shipping point. There used to be a firm by the name of Garland Brothers—that would be ten or twelve miles from Wellford's wharf to that point. I used to ship to a man named S. B. Walker, at Oram's Cross-Roads; the shipping point was Wellford's. He lived seven or eight miles from Kingsales, but he used to get his goods by the way of Wellford's; it was convenient to him.

Q. Have you or not taken and left the boat at the wharf at Tappahannock?

A. Yes, sir.

Q. Are you or not familiar with the situation there of the wharf with reference to the shore and the stores?

A. Yes, sir.

Q. Will you please look at the plat now handed you, marked Defendant's Exhibit "E," and see if you can recognize it?

A. Yes, that is a pretty good map.

Q. Is it or not in your judgment a correct representation of the situation of the wharf with reference to the shore and the streets?

A. I would say it was a perfect map, sir.

Q. Will you please state the section of country, so far as you know, which uses Tappahannock as its shipping point?

A. Well, in answer to that, people come from miles back in King & Queen to get their shipments of goods from the wharf at Tappahannock—for twenty miles back.

Q. Please state if you know what character of goods are received and shipped at Tappahannock?

A. All grades—boots and shoes, groceries, drugs, clothing, notions, hats, everything—there is nothing hardly you can describe that is not landed there.

Q. Will or not a similar description of the shipments and merchandise brought into the other wharves along the river, be the same as you give with reference to the shipments and merchandise brought into Tappahannock—as to the general quality and kinds of goods, I mean?

A. That depends on the ability of the people to receive them; some sections are better off than others.

491 Q. I mean is the character of the shipments to other wharves a general assortment of merchandise of various sorts?

A. Oh, I grasp you now. Yes, I did not grasp it at first.

Q. Please state the character of the country with reference to the condition of settlements adjacent to Tappahannock?

A. I will answer this: There is no section of Virginia more prosperous than the Northern Neck and the south side of the Rappahannock, or more sought after by the commercial world to-day in Virginia.

Q. Have you ever taken or left the boats at Naylor's wharf?

A. I have, sir.

Q. Have you traveled back into the country from Naylor's?

A. From Naylor's across the creek there to Warsaw only—only to reach Warsaw.

Q. Have you or not visited Leedstown?

A. I have, sir.

Q. Are you or not familiar with the situation at Leedstown?

A. I have traveled that road back from there to Oak Grove, and that section, yes, sir.

Q. In your trips as a traveling salesman?

A. Yes, sir. There is a public road there. It reached to the main road, and went to the left, leading to Montrose.

Plaintiff's counsel objects to the answer in so far as it seeks to establish the character of the road.

Q. How far in Montrose from Leedstown, approximately?

A. If my memory serves me right, I should say twelve or fifteen miles.

Q. What is the usual shipping place for Montrose?

A. I would think they would take Carter's wharf, sir.

Q. Have you or not made sales in pursuit of your business at Montrose?

A. I have, sir.

Q. Please state if you remember by what route the goods were ordered shipped?

A. By the Weems Line to Carter's wharf, if my memory serves me right.

Q. Have you or not ever taken and left the boat at Carter's wharf?

A. No, sir.

Q. Please state what county Montrose is in?

A. Westmoreland County.

Q. Please state what is the County seat of that County.

A. Montrose is the county seat.

Q. Please state if you know how many stores there are at or immediately around Montrose?

A. That is a thickly settled section throughout there. There are four or five stores at Montrose, and all down that road there leading to Templeman's Cross-Roads—I think is the name of it—there are stores.

492 Q. Please state whether or not you have frequently traveled to and from Fredericksburg on the Weems Line Steamers plying between Fredericksburg and Baltimore?

A. I certainly have, yes, sir.

Q. Please state about what time it usually took you to go from say Wellford's wharf to Fredericksburg, by the Baltimore boats?

A. Well, it would depend upon the arrival of the boat. Sometimes the boat would be behind six and seven hours of her schedule time.

Q. Please state about what time you would ordinarily reach Fredericksburg by the Baltimore boats?

A. Well, if she was upon her regular schedule time—with the large boats—having good water, and not too much freight to throw off at the wharves, she would arrive here between nine and ten o'clock at night.

Q. What proportion of trips which you made on the Baltimore boats would put you in Fredericksburg at that hou

A. Well, I would say that on my trips homewa , especially in the winter season, I would have to stay aboard at nights more than half my time.

Q. Then I understand you to say that you would arrive in Fredericksburg the following morning?

A. They would generally tie up at Radcliffe at night, yes, sir. Or sometimes she would come up after we had taken state rooms, at 12 or 1 o'clock at night—too late to go ashore.

Cross-examination.

By Mr. WILLIAMS:

Q. I hand you herewith, three plats of Tappahannock wharf, marked respectively, "Plaintiff's Exhibit No. 24; Defendant's Exhibit E, and Plaintiff's Exhibit No. 15," and ask you if they are not all accurate plats of that wharf?

A. Now, to me—to my best judgment—I like this map—Defendant's Exhibit E. This roadway and this bridgeway off to the factory. That is all I can say, sir.

Q. In what particulars do you think Defendant's Exhibit "E" is more accurate than Plaintiff's Exhibit No. 15?

A. This wagon lot all down here is natural; there is that bridge leading into this factory, sir, off from the main bridgeway.

By SPECIAL MASTER:

Q. It is not on the other map you mean?

A. No, sir, not on the other map. I don't put myself here to know anything about maps.

493 By Mr. WILLIAMS:

Q. When was the last time you were at Tappahannock?

A. I was there in March, I think.

Q. How many times have you been to Tappahannock, approximately?

A. I never kept a diary of the times, but I suppose I know it as well as you do.

Q. Have you been there fifteen times, twenty times, fifty times?

A. Yes, sir, fifty times in my life. I know every chick and child in the town.

Q. When was the runway built from the pickle factory to the wharf?

A. I can not answer that question.

Q. When was the last wharf put up at Tappahannock?

A. I could not answer that question. My memory don't serve me on that.

And further this deponent saith not.

J. A. TURNER.

NOTE.—By agreement between parties, by counsel, the signature of the witness is waived.

JOHN R. SHERWOOD, another witness on behalf of the defendant first duly sworn, testified as follows:

By Mr. CARTER:

Q. Will you please state where you reside?

A. In Essex, sir.

Q. Please state whether or not you are familiar with the town of Tappahannock?

A. I am, sir.

Q. Please state how often you customarily visit Tappahannock?

A. I average, sir, I suppose, about twice a week.

Q. Please state whether or not you fill any official position in that county?

A. Yes, sir; auctioneer.

Q. Are you or not present at Tappahannock generally on court days?

A. Yes, sir, every court; I don't think I have missed one for a long time—many years.

Q. Will you please look at the paper now handed you marked Defendant's Exhibit "E," and say whether or not the same is a fair representation of the wharf and adjacent shore at Tappahannock?

A. I don't know, sir, that I can say—I left my glasses. I could not say. If you choose to ask any questions about the wharf I am pretty familiar with it and with the shore—but I can not say that.

494 Q. Please state whether or not there is any lot, house or other object, in front of Main street between the end of Main street and the river?

A. Down on the river?

Q. Yes.

A. No, sir.

Q. Please state whether or not there is any fenced lot, house, or other object in front of Queen street, at or near the river?

A. Pickle factory.

Q. Please state whether or not there is a walkway or bridge from the pickle factory to the walkway or bridge of the wharf?

A. There is a way to carry out to the wharf—from the pickle factory to the wharf where they ship out.

Q. Please state whether or not there is any obstruction on the river shore to interfere in any way with driving around the shore, from Main street to Queen street.

A. Only a little walkway that is thrown up there to keep people from walking into the water when the tide rises. We drive over it—don't make any stop for it. There are some poles put down—when the tide rises the water comes up, and they have that way to walk, you know.

Q. What is the character of that shore?

A. Pretty sandy—very sandy.

Q. And you say the water rises over it?

A. Oh, yes, sir; I have seen the water rise and come up into Wynn's lot, to the stable—I suppose one hundred yards. You can't walk there then—you have to ride, or not go at all.

Q. When it is very high the walkway is under water?

A. Yes, sir.

Q. Please state how long you have been familiar with this portion of shore at Tappahannock?

A. Forty-five years, sir—longer than that—but I remember about it from the time I was fifteen or sixteen years old. I am 61 now.

Q. Please state whether or not vessels are accustomed to go to this part of the shore for the purpose of selling fish in season?

A. Yes, sir.

Q. Please state whether or not any of the citizens of the surrounding country have ever visited this part of the shore with their teams and vehicles for the purpose of buying herring and other fish in season?

A. Every spring, sir, I have seen the place crowded with carts.

Q. Please state if you know the names of any of the streets in Tappahannock?

A. Well, the street that is generally used to go down to the wharf in Queen street, and what most of the people call Main street is Prince street. Around by Ramos' shop, you can not travel that street—that never has been traveled to go down to the river; when you come into Tappahannock that is the straight street down to the river.

495 Q. Are there any streets that cross Main street and run parallel with the river?

A. Yes, sir.

Q. Do you know the names of those streets?

A. The streets that cross by Scott's stable is called Cross street and Church street—I don't remember the other. The first cross street comes by the bridge store—I can't tell you the name of that.

Q. How many other streets parallel with Church street are between Church street and the river.

A. Two—one by the bridge store, and the cross street up by Scott's stable.

Q. Have you or not ever seen any boats or vessels land at the wharf at Tappahannock?

A. I have.

Q. Will you please state what boats or vessels you have seen, from time to time?

A. Well, I do not know their names; I generally buy my herring from Captain Brown, a colored man. He generally lands up to the right and fastens to the wharf. I have seen other vessels there but I don't know the names of the vessels. Brown's vessel—I generally buy from him every spring.

Q. Then I understand you to say that vessels in the spring habitually come up to Tappahannock, tie up to the wharf, and sell fish over the wharf?

A. Yes, sir.

Q. That you yourself have habitually bought fish at the wharf?

A. Yes, bought them and toted them out in a basket, every spring.

Q. Did I or not understand you to say that you had frequently seen the shore thick with vehicles of parties purchasing fish from such vessels?

A. Yes, sir.

Cross-examination.

By Mr. WILLIAMS:

Q. What is that walkway to the wharf you have mentioned, made of?

A. It is pine poles on the outside, and I think, sir, it is filled up with gravel.

Q. Who put it there?

A. I don't know, sir. I know who put it there—a man by the name of Jim Hayes put it there, but I think Captain Bagby had it put there.

Q. Did you ever see the "Tourist" land at Tappahannock?

A. No, sir.

Q. Do you know whether or not the vessels that you speak of as landing at the wharf had any arrangement with the Weems Steamboat Company about landing there?

A. No, sir, I don't know anything about it.

And further this deponent saith not.

JOHN R. SHEARWOOD.

NOTE.—By agreement between the parties, by counsel, the signature of the witness is waived.

496 J. Z. TAYLOR, another witness on behalf of the defendant, first duly sworn, deposes as follows:

By Mr. CARTER:

Q. Please state where you reside?

A. In Essex between five and six miles from Tappahannock.

Q. Please state whether or not you are familiar with the town?

A. Yes, sir, I am familiar with it; I have known it I suppose for thirty years; travel there; do shipping there myself, and haul stuff away from there for fifteen or sixteen years now.

Q. Will you please state what business you are in?

A. I am in the sawmill business; farming two.

Q. Will you please state whether or not you have frequently seen vessels selling fish at Tappahannock, and persons with vehicles on the shore between Main street and Queen street for the purpose of purchasing?

A. Yes, sir, I have. Every year since I have known the place, fish have been sold there. I have bought them myself—carried them off the wharf and put them in my wagon standing at the wharf. I have seen the shore just crowded with wagons and carts—so much crowded you could hardly get down to it; and it is the case every year during the fish season.

Q. Will you please state whether or not you know the names of any of the streets in Tappahannock?

A. Yes, I think I know the names of them—some of them.

Q. Do you know the location of the court house in Tappahannock?

A. Yes, sir.

Q. Do you know the name of the street immediately in front of the court house?

A. Running towards the river?

Q. Running towards the river?

A. I think that is what they call Prince street. We call it Main street, I think.

Q. Do you know the names of any streets which run across Main street in the other direction?

A. Yes, sir.

Q. Will you please name them?

A. I think the first one you get to coming from the river up is called Water street, running parallel with the river. The next one, next to the court house, I think is Cross street. The one above that is Church street. There are only three cross streets in the place.

497 Cross-examination.

By Mr. WILLIAMS:

Q. Do you know what arrangement, if any, the vessels you speak of which landed at the wharf to sell fish, had with the Weems Steamboat Company about landing there?

A. No, sir, I do not.

And further this deponent saith not.

J. Z. TAYLOR.

NOTE.—By agreement between the parties, by counsel, the signature of the witness is waived.

Captain A. E. CRADDOCK, another witness on behalf of the defendant, being first duly sworn, deposes as follows:

By Mr. CARTER:

Q. Will you please state your occupation or profession?

A. I am master of steam vessels; that is my trade, and I am now master of the steamer "Tourist."

Q. Please state how long you have been master of the "Tourist?"

A. Since the 15th of January—I have been aboard of her since the 1st.

Q. Please state whether or not you have made any trips on the Rappahannock river below Fredericksburg?

A. I have made every trip since I have been on her, down the river. I made three round trips a week.

Q. Will you please state whether or not you are familiar with the wharves between Fredericksburg and Urbanna?

A. I am.

Q. Will you please state whether or not the pier heads of all the wharves between Fredericksburg and Urbanna at which you ever land your boat, are in the navigable waters of the Rappahannock river?

A. They are, sir.

Q. Will you please state whether or not you are especially familiar with the wharf at Tappahannock?

A. I am.

Q. Will you please state whether or not it is possible for two steam vessels to conveniently use the pier head at Tappahannock at the same time?

A. They can, sir; I have landed there with two.

Q. Is it possible for two to use the wharf without one vessel unloading across the other?

A. Yes, sir.

498 Q. Will you state whether or not one steamer can so occupy the front of the wharf as to prevent the use of the wharf at the time by any other vessel?

A. It can, by getting right on the face of the dock, and holding it; but there is room to go in on either side of the dock—plenty room for any steamer on this river to land, side by side by which either can conveniently unload without coming in contact with the other, because I have been in the slip on either side of the wharf, at low tide, and my boat draws seven and a half feet of water.

Q. Have you or not been frequently held out of the dock at Tappahannock by other steamers lying across the face of that dock?

A. I have, sir.

Q. Have you or not started in to the end of the pier, when the end was vacant, and a steamer lying at the front of the dock, and had the steamer at the dock move up to prevent your reaching the end?

A. I have—that is, the side of the dock. I don't exactly understand the question, but will explain it the best I can. The steamer was lying on the front of the dock—the end of the dock—and I tried to get in the slip and they shoved her ahead to prevent me from going into the slip.

Q. Did you then try to get into the other slip?

A. Yes, sir.

Q. What prevented you?

A. By their working her back.

Q. Has that happened to you on more than one occasion?

A. Yes, sir, on several occasions.

Q. Have you or not, with the steamer keeping you from either slip by the manipulation you describe, gone around and landed inside of the steamer on the face of the dock?

A. I have, sir, landed alongside of a schooner and unloaded my freight across her on to the dock.

Q. Then I understand you to say that at the time the schooner was lying in one slip, a steamer by moving up and back kept you from going in?

A. On the upper slip; the schooner was on the lower side, and they shut me off from the upper side and I went alongside the schooner.

Q. What is the character of freight handled by your boat at the wharves on the Rappahannock river.

A. We carry most everything you can mention—general merchandise dry goods, hay, grain—we carry freight of every description.

Q. What is your custom in handling this freight at the wharves?

A. I go to the dock and put the freight out on the dock and ask if there is anything for me, and if anyone on the dock says yes,

I take it and put it on the boat. If there are any passengers to get off, they get off, and then I turn loose and go on.

499 Cross-examination.

By Mr. WILLIAMS:

Q. You say you have been running on the Tourist since January 15th, making three trips a week?

A. I have been on her since the 1st of January; I have been master since the 15th.

Q. You have been master of the steamer "Tourist" since January 15th, and have made three trips a week since then?

A. Up to the time she broke down; while she has been running I have made three round trips a week.

Q. And you have landed continuously at Leedstown, Port Royal and all the landings between Fredericksburg and Urbanna on the Rappahannock river?

A. I can name them all to you, and have landed at all of them: first, Radcliffe's, we land there; the next is Hop Yard we land there; the next is Haysmont, we land there; the next is Mansmont, we land there; the next is Cliff, we land there; the next is Port Conway, we land there; the next is Port Royal, we land there; the next is Pratt's, we land there; the next is Greenlaws, we stop there; the next is Wilmont, we land there; the next wharf is Leedsville, we land there; the next is Port Micou, we land there; the next is Saunders', we land there; the next is Leedstown; we land there; the next is Layton's, we land there; the next is Carter's, we land there; the next is Blandville, we land there; the next is Naylor's, we land there; the next is Tappahannock, we land there; the next is Wellford's, we land there; the next is Ware's, we land there; the next is Bowler's, we land there; the next is Sharp's, we land there; the next is Bayport, we land there; the next is Whealton's, we land there; the next is Waterview, we land there; the next is Monaskon, we land there; and sometimes we go to West Urbanna, but very seldom. I have only been in there three times, I believe.

Q. Some of those wharves are owned by the Weems Steamboat Company, are they not?

A. I could not tell you.

Q. Are not Port Conway, Leedstown, Tappahannock, Sharp's and Wellford's wharves owned and controlled by the Weems Steamboat Company?

A. I could not tell you.

Q. Are they not controlled by the Weems Steamboat Company?

A. I could not tell you whether they are or not; I never had anything to do with that part of it; I only know I go there and take on any freight there is for me, and land my passengers and pull out. Who they belong to I could not tell you.

Q. Don't you know as a matter of fact that in landing at these five wharves you are landing against the protest of the Weems Steamboat Company?

A. I do not; they have never notified me never to land at them.

500 Q. Were you not served with a copy of the bill in this case?

A. I was served with a subpœna to appear in this case.

Q. About the 1st of April?

A. I think so, but I have never been notified from any Weems men up to that time it was served on me by the marshal of the United States Court to appear in that case.

Q. Did you read that bill through?

A. Yes, sir, I read it through.

Q. What steamer carries the mail on the Rappahannock river—the "Caroline" or the "Tourist"?

Defendant's counsel objects to this question as immaterial and irrelevant.

A. The "Caroline" takes it to what mail wharves there are from here to Tappahannock.

Q. Have you not on several occasions in the steamer "Tourist" laid at Port Royal or Tappahannock, or Sharp's, Wellford's or Leedstown, and thereby kept the steamer "Caroline" out in the river unable to land until you had gotten through?

A. I have never held a wharf on this river more than fifteen minutes.

Q. (Question repeated.)

—. I have been at the wharf when she came up, but she never made any stop. I have been at the wharf on several occasions and she would not wait, but would run by.

Q. Have you not on numerous occasions landed the steamer "Tourist" on the face of Tappahannock wharf, and have you not seen the steamer "Caroline" lying out in the stream waiting for the steamer "Tourist" to leave Tappahannock?

A. On one occasion only, that I remember. She came up there and I held the dock five minutes. I timed her.

Q. How did you hold the dock?

A. I was lying on the end of the dock landing my freight, and as soon as I landed my freight I went ahead.

Q. And you say that is the only occasion at Tappahannock wharf that you held the wharf as against the steamer Caroline?

A. That is the only occasion I remember anything of seeing her when I was there. When I am ahead of her I always make the landings and get away before she comes. Five minutes is as long as I want there.

Q. Have you not laid at Leedstown with the Tourist, and seen the steamer "Caroline" out in the stream waiting to get to the wharf?

A. Now, I am not certain about that, but I am under the impression that I was there loading some grain one day and she came up and I held her four or five minutes. I am not confident of
501 this—it has been so long, if I did, that I could not tell whether she came up or was lying off waiting for me.

Q. How long ago was that?

A. If my memory is right it has been—well, I could not tell you.

Q. Did you not, as a matter of fact, on Monday last lay at Leedstown and see the Steamer "Caroline" waiting out in the stream for you to come away?

A. Last Monday? No, sir, I didn't notice any steamer waiting for me. I was ahead of the "Caroline" all the way down the river.

Q. As a matter of fact, you use all the wharves I have mentioned, on the same terms, so far as you are concerned, as the steamer "Caroline"; is that true?

A. I do.

Q. When you see the steamer "Caroline" about to make a wharf——

A. Now, I would like to say: on several occasions—since you mention this—I have come to wharves when there were passengers and freight on the wharves for me, and have had the "Caroline" more than one time to hold me more than an hour, and on several occasions three-quarters, and I would have to lower a life-boat and the passengers would come off to me in that and take the chances; but whenever there was a horse and buggy on the wharf I would have to lay there until the "Caroline" got away. One time I came up the river and went back six miles, until she went away, and got them. But I have never held the wharf any longer than I could possibly land my freight.

Q. Have you ever, since the Tourist and Caroline have been running on the river together from your standpoint using the wharf in the same way, used the wharf as the Caroline used it, giving the Caroline no particular favors in the matter?

A. When I go there I take my freight off as quick as I can; I never have held her as she has held me.

Q. If you see the steamer Caroline behind you heading for one of the wharves in controversy, didn't the steamer Tourist, under your management go ahead and make the wharf regardless of whether or not the Caroline wanted to go in, or intended to go into the wharf?

A. Our rules and regulations are that the boat ahead is entitled to the right of way, and if I am ahead I am sure to make my landing.

Q. What rules and regulations do you refer to?

A. Rules of the road say that the boat ahead, the fastest boat, is entitled to the right of way.

Q. Don't they apply when you are navigating the water, and do they apply when you are landing at somebody else's wharf?

A. I don't know anything about the wharf question at all. They are all in navigable water, or we could not land at them. We can land at any of them at low tide, and our boat draws seven and a half feet of water.

502 Q. Will you give me the substance of any rule or regulation which gives one steamboat the right to land at a wharf belonging to or claimed by the owners of another steamboat making, or about to make the same wharf?

Objected to by counsel for defendant, as irrelevant and impertinent to the issue of this investigation.

A. I don't know who the wharves belong to; you can find out from our company who the wharfage is paid to. I am ordered to stop at these wharves, and according to rules I do it.

Q. According to what rules?

A. According to my orders from my company; they can tell you who the wharves belong to; I don't know.

Q. Then when you say there are rules and regulations, rules of the road, you did not mean that?

A. Rules and regulations, and rules of the road are the same. Rules and regulations of navigating a steamer down the river.

Q. I ask you then to point me to, or give me the substance of any section of the rules and regulations as enacted by Congress or by the Steamboat Inspectors, to the effect that one steamboat can land ahead of another steamboat at any wharf?

A. I don't think there is any rule or regulation in regard to landing at a wharf, but any wharf that is out in navigable water I have the right to go to, until it is otherwise proved to me. I have been on other rivers before. On the James river the Pocahontas carries the mail. I worked on the steamer "McCall," and if we went ahead and could make the landing we always did so.

Q. Then you say if you happen to be ahead of the Caroline, according to the rules and regulations of the road, you were in error?

A. I did not say that the rules and regulations of the road entitled me to make the landings; but if I got to the landings first of course I would make it.

Q. Is there anything in the rules or regulations—by that I mean the rules and regulations as provided by Congress and as provided by the Steamboat Inspectors, and a copy of which I presume has been given you as a licensed master, saying anything about what boat shall have the preference in landing at any wharf? If so, point me out or give me the number of the section, or the substance of the section.

A. I don't know of any rules. I have never looked it up in regard to that. I believe this investigation is to find that out now. I do not know, because I am not an attorney at law, but I am a pilot, and I could not tell you.

503 Q. Then, as a matter of fact, you stop at these wharves in controversy because the company which employs you instructed you to stop at those wharves, and you were simply carrying out their instructions?

A. I did, sir.

Q. Did you block the wharf at Monaskon with the steamboat "Tourist" against the steamer "Essex" of the Weems Steamboat Company, while you were running the "Tourist"?

A. Not over five minutes in my life

Q. Have you ever blocked her?

A. I have been to the wharf ahead of her and landed—just held her five minutes—I can show you by my log—and twenty-one minutes is the longest time I have ever held a wharf on the river. I was broke down at Waterview one time when the "Caroline" came up and she laid out in the stream until I could get around in the slip. I have always made it a custom to get away as fast as I could—never to hold other boats.

Q. You stated in your direct examination that you were especialy

familiar with Tappahannock. What do you mean by "specially familiar" with Tappahannock?

A. With the water at the end of the pier.

Q. Are you more familiar with that than with the other wharves?

A. No, I know all the wharves; but I know that two steamers can land at that wharf, and go far enough in at either side. Two steamers can land there, and get out without being in each other's way at all.

Redirect examination.

By Mr. CARTER:

Q. Is there or not a custom house at Tappahannock?

A. Yes, sir.

And further this deponent saith not.

A. E. CRADDOCK.

NOTE.—By agreement between the parties, by counsel, the signature of the witness is waived.

Defendant here offers in evidence:

(1) Petition for opening of road to Ware's wharf, together with report of reviews, order of court, &c., and copy of plat, all filed as "Defendant's Exhibit S."

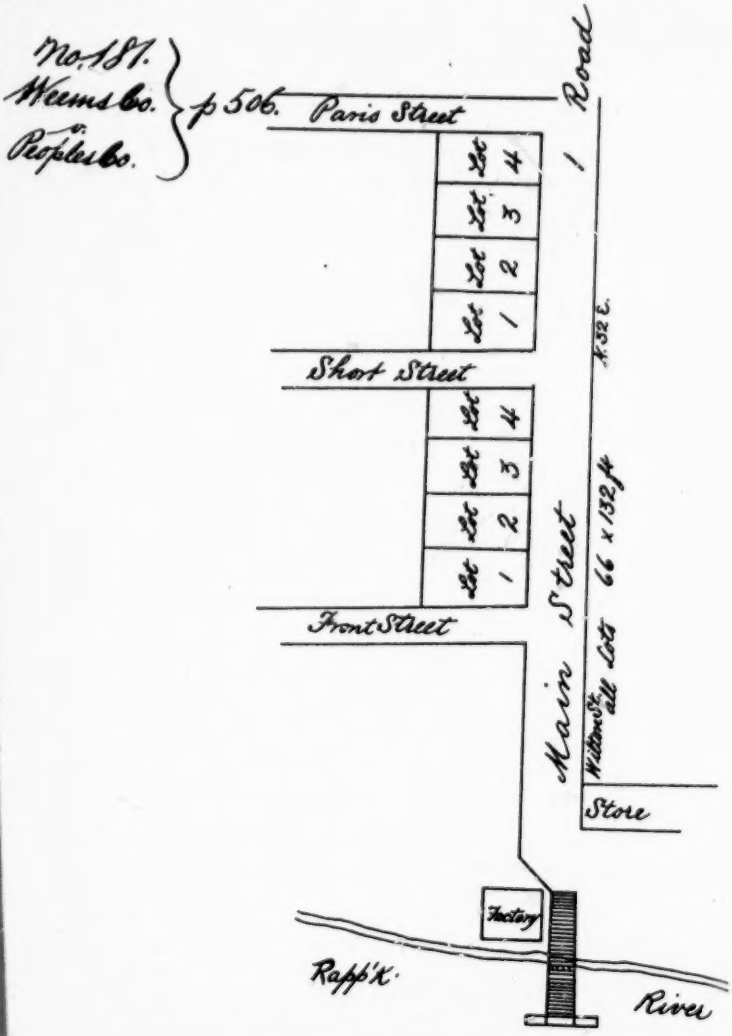
(2) Record of Grand Jury finding indictment against Milton Neale for obstructing the county landing at Bowler's; result of trial, &c., all filed as "Defendant's Exhibit T."

504 NOTE.—It is agreed between counsel for the respective parties that Mr. R. H. Bland and Mr. C. B. Hundley, who are merchants and reside in the vicinity of Bayport, would, if produced and present as witnesses, testify that the public landing known as "Mason's Mill Landing" (referred to in "Defendant's Exhibit U" hereafter to be offered in evidence) is the landing on the beach near Farinholt's store at Bayport, on which the wharf at Bayport abuts; and would also testify that the character of the beach in the immediate vicinity of the landing and shore-end of the wharf is a sandy beach. That statement is to be considered as in evidence, subject to such exception as might be interposed by counsel for the plaintiff, were the testimony actually taken in regular form; and the plaintiff's counsel hereby reserves the right to except, and does except, to said testimony.

It is further agreed that the witness C. B. Hundley is a reputable witness and that he has resided in that neighborhood for 25 years or more; and that R. H. Bland is a reputable witness and has resided at Owen Hill and Bayport and the immediate vicinity for the past fifteen years; and that both are familiar with the surrounding country and the local designations of places and localities. In connection with this evidence the defendant herewith filed an exhibit marked "Defendant's Exhibit U."

Plaintiff's counsel excepts to Exhibit "S" for the reason that the same is immaterial and irrelevant.

Defendants Exhibit A filed with Depositions and returned with Special Masters Report.



Clerk's office County Court of Richmond County April 5th 1897. The foregoing map was this day

Traced by:- C.J. Roelker- Jan. 23-1906.

Plaintiff's counsel excepts also to Exhibit "T," because the same is immaterial and irrelevant.

Plaintiff's counsel excepts to Exhibit "U" for the reason that the same does not refer to any of the wharves in controversy, and because the same is immaterial and irrelevant.

Note by Special Master:

Counsel for defendant reserves the right to hereafter file as exhibits in this suit, to be read in evidence in connection therewith, certain copies of records pertaining to the character of the landings and wharves in question in this suit, and of the roads leading to the said wharves: with the right to defendant's counsel to submit a statement, if he desires, of witness William D. Carter, which statement, subject to the approval of counsel for the plaintiff, is to be admitted in evidence; which statement of the said witness may be rejected by counsel for the plaintiff, in which event the said witness may be placed upon the stand and regularly examined and cross-examined in this behalf.

505 It is understood that plaintiff's counsel reserves the right to except to the admissibility of any of the above-mentioned records, upon any grounds other than that they are not properly certified under the Act of Congress; provided that they are duly signed by the clerk of the court.

NOTE.—It is understood that the statement of Mr. Carter is submitted, and rejected, and Mr. Carter is examined on the stand, that then the above admission as to the identity of Mason's Landing, &c., will be considered as effective, and witnesses will be produced by defendants' counsel, if he so desires, on that point.

The special master reports that since the taking of the foregoing depositions, counsel for the defendant company have filed with him additional documentary evidence, which said documents have been marked by the special master as follows, to-wit:

Defendants' Exhibit "V" & "W"; "Defendants' Exhibit X"; Defendants' Exhibit Y; Defendants' Exhibit "Z"; and "Defendants' Exhibit AA"; all of which said exhibits are herewith returned.

Counsel for complainant excepts to the admission of the said exhibits as evidence, and requests the special master to state the grounds of his objection, as follows:

"Because the same, and each of them, are immaterial and irrelevant, and do not tend to prove in any way any of the issues in this case, and do not prove in any way the character of the roads and landings mentioned in the same, or any of them; and because they purport to be copies of records which are not required by law to be kept by the clerks of the courts certifying the same."

E. M. LONG,
Special Master.

(Here follows diagram marked p. 506.)

507 at the instance of D. W. C Sharp and on further proof of G. C. Wright, truly recorded.

Teste: H. L. WARNER, *D. C.*

Copy—Teste: J. B. RAINS, *Clerk.*
Copy—Teste: J. B. RAINS, *Clerk.*

I hereby certify that the above is an accurate extract taken from the map of Milton recorded in the Clerk's Office of Richmond County, Virginia. Given under my hand this 20th day of Aug. 1903.

J. B. RAINS,
Clerk, Co. Ct. Rich'd Co., Va.

DEFENDANT'S EXHIBIT "B." Filed with Depositions and Returned with Special Master's Report.

VIRGINIA:

In Essex County Court, September 19th, 1882.

Upon the petition of H. L. Newbill, W. D. Hoskins, W. H. Street and Wm. G. Newbill, asking that two acres of land, at Bowlers, in this county be condemned for public use as a public landing, and that Commissioners be appointed by this Court to law off the said two acres of land by proper metes and bounds or as much of said two acres as the said Commissioners may deem necessary, William P. Robinson, Robert L. Ware, and Warren J. Taylor, the Commissioners who viewed the land of Robert M. Neale and Alma V. Gouldman, having reported in favor of establishing a public landing at Bowlers in this county, and the court having at May Term 1882, adopted the landings as recommended in statement (1) of said report as follows:

Commencing thirty feet from the upper or north corner of the store house of Robert M. Neale, in a line with north side of said building below low water mark and thence down the river to a point opposite the lower corner of Miss A. Gouldman's granary, and thence to a point within thirty feet of said granary and in a line with lower side of said building and thence to the beginning. It is ordered that the said public landing as set forth be established and that the said Commissioners give notice of the same by advertisements at Bowlers, to the end that no one obstruct the same to the prejudice of the rights of individuals or of the public.

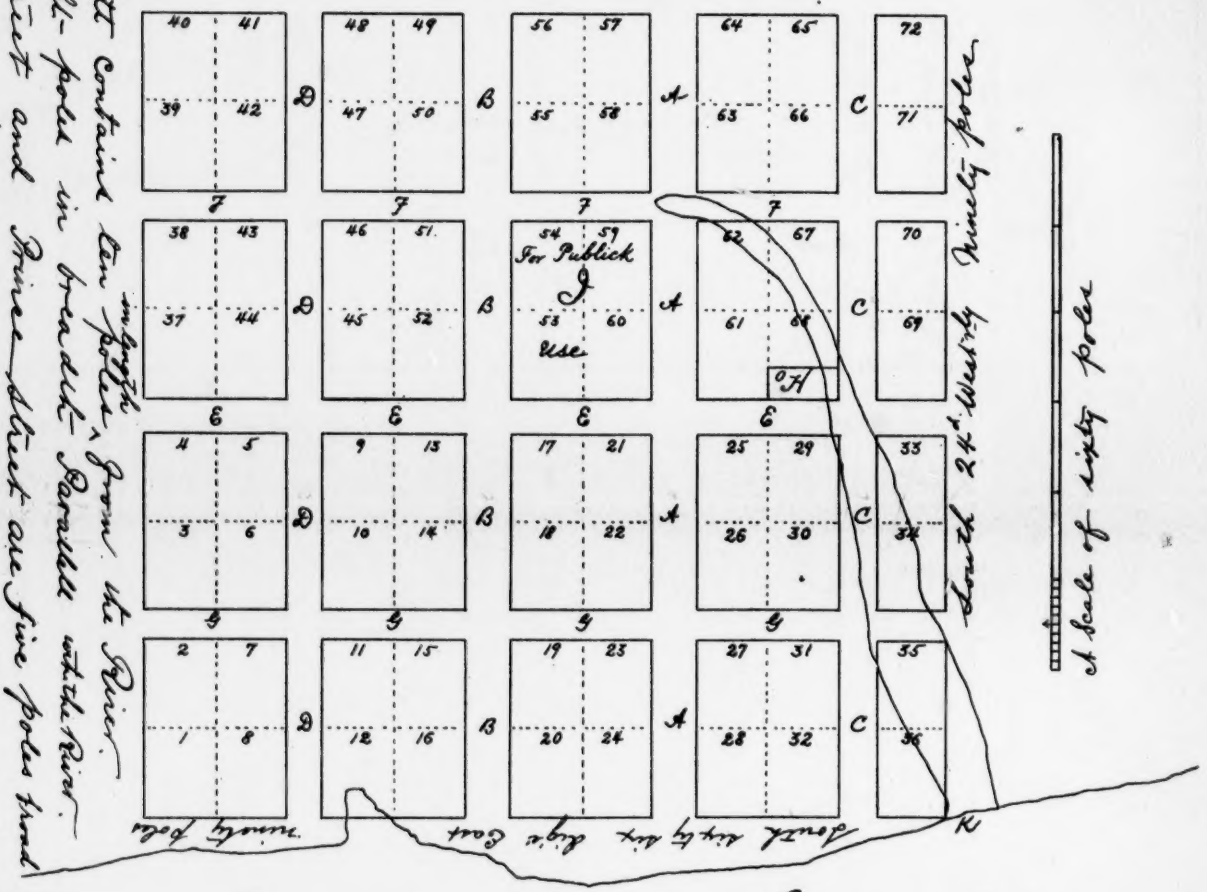
A Copy—Teste: H. SOUTHWORTH, *Clerk.*

Defendant's Exhibit D filed with Depositions and returned with Special Masters Report.

No 181. Weems &c. } p 570
Ropler &c.

Tappahannock Town

Each Lott contains Ten Poles in length from the River and Eight poles in breadth Parallell with the River. Queen Street and Prince Street are five Poles broad Duke Street, Marsh Street and Cross Street are four Poles broad. Church Lane and Water Lane are three Poles broad.



A	Queen Street-
B	Prince Street-
C	Marsh Street-
D	Duke Street-
E	Cross Street-
F	Church Lane
G	Water Lane
H	Twenty-four Sqr. perches belonging to the Spring.
I	Four Lotts appropriated for public use
K	A Stake at the point of Land by the Riverside on ye lower side a marshy Gutt being the beginning.

A Plat of fifty acres of land lying at Hobb's Hole, Essex Co. Surveyed the 13th day of July 1706 into lotts or half acres - pursuant to an order of Essex County Court, Dated the 10th day of July, 1706.

Pr Harry Beverley, Surv r.

Traced by:- C.J. Roelker - Jan. 23-1906.

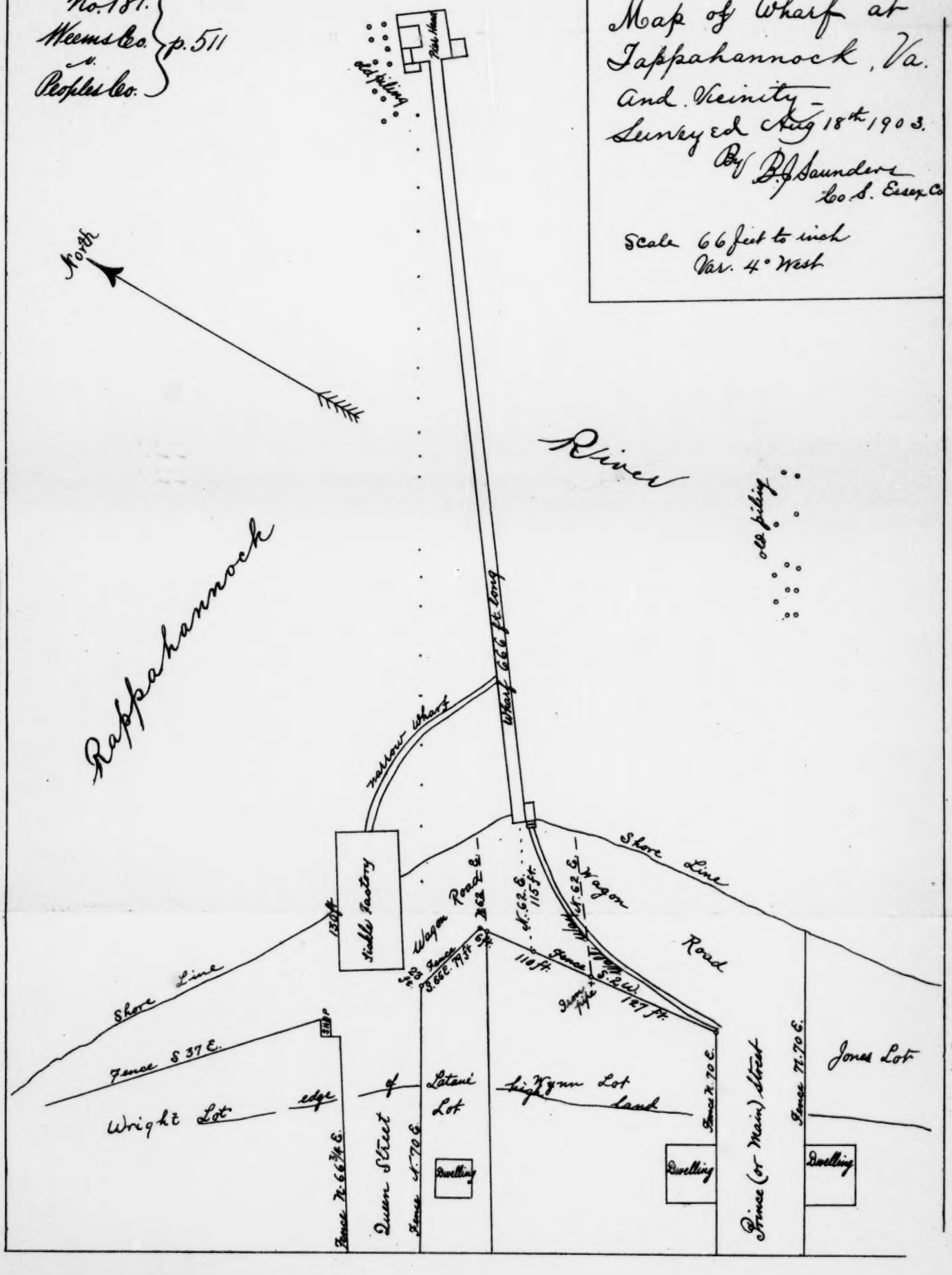
Defendant's Exhibit E filed with Depositions and returned with Special Master's Report.

No. 181.
Weems Co. } p. 511
v.
Peoples Co.

Map of Wharf at Tappahannock, Va. and Vicinity —

Surveyed Aug 18th 1903.
By B. J. Saunders
Co. S. Essex Co.

Scale 66 feet to inch
Var. 4° West



Traced by:- C. J. Roelker - Jan. 23-1906

Map of Wharf at Leeds town, Va. and Vicinity
Surveyed and Drawn by B J Saunders Co. S. Essex Co.
Aug. 24th 1903
Scale 33 ft. to inch
Var. 4° West

Defendant's Exhibit P filed with Depositions and returned with Special Master's Report.

No 1 S. Weems & al. v. Peoples Co. } p. 512

508 DEFENDANT'S EXHIBIT "C." Filed with Depositions and Returned with Special Master's Report.

VIRGINIA:

In Essex County Court, March 17th, 1862.

It is ordered that the road leading from the hill above Bowler's and which intersects with the road leading from Centre Cross to the forks below Manns Meeting house be added to road No. 56 in this county and John H. Clarkson is appointed surveyor of the said road beginning at *Bowler's thence to Centre Cross,* from thence down the road leading from Tappahannock to Urbanna, to the fork below Manns Meetinghouse which leads to Birds Bridge, embracing the said road from the hill above Bowlers & which intersects with the road leading from Centre Cross to the fork below Manns Meetinghouse. And it is further ordered that the Clerk of this Court issue a writ notifying the said Surveyor of his appointment and that he endorse on the said writ the names of the persons who are to work on the said road.

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

STATE OF VIRGINIA,
County of Essex, To-wit:

I, H. Southworth, Clerk of the County Court for the County and State aforesaid do certify that the foregoing is a true copy from the records of the said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court this 14th day of August, 1903.

[SEAL.] H. SOUTHWORTH, *Clerk.*

At a Court Held for Essex County, on Tuesday, the 15th Day of August, 1727.

The Clerk of this Court having found the above platt of Tappahannock Town among the old papers and the same having never been recorded, it is therefore ordered that the clerk record it which is accordingly recorded.

Teste: W. BEVERLEY, *Clerk.*

509 Office of the Circuit and County Court of Essex County.

I, H. Southworth Clerk of the County Court of Essex County in the State of Virginia, do hereby certify that the foregoing and annexed is a true copy of the original plat of Hobb's Hole now Tappahannock made on parchment, filed in the Clerk's Office of said Court, and recorded therein in Deed Book No. 18 page 285.

Given under my hand this 22nd day of August 1903.

H. SOUTHWORTH, *Clerk.*

(Here follow diagrams marked pp. 510, 511, & 512.)

513 DEFENDANT'S EXHIBIT "G." Filed with Depositions and Returned with Special Master's Report.

Henning Statutes at Large Volume 6-1748-1755 page 296 amended 316 Volume 5-1738-1746 page 287.

DEFENDANT'S EXHIBIT "H." Filed with Depositions and Returned with Special Master's Report.

Wm. Dougless Carter, President; A. W. Embrey, Vice-President; A. Randolph Howard, Treasurer.

No. 1099.

The Peoples Steamboat Company.

Capital, $50,000.00.

URBANNA, VA.—FREDERICKSBURG, VA., *May* 14, 1903.

Pay to the order of Whealton Pckg. Co. $4.90
Four .....90/100 Dollars.

Wharfage Jan'y Feb'y M'ch 1903.

The Bank of Middlesex.
Urbanna, Va.

Whealton.

THE PEOPLE'S STEAMBOAT COMPANY,
A. RANDOLPH HOWARD, *Treasurer.*

(Paid.)

Endorsed.

Pay to the order of The Lancaster National Bank.

The Whealton Packing Company.

John H. Whealton, Manager.

Pay to the order of The Bank of Middlesex, Urbanna, Va.

The Lancaster Nat'l Bank.

of Irvington, Va.

514 DEFENDANT'S EXHIBIT "I." Filed with Depositions and Returned with Special Master's Report.

Wm. D. Carter, President; A. W. Embrey, Vice-President; A. Randolph Howard, Treasurer; F. V. Archer, General Manager.

The People's Steamboat Company.

Fredericksburg-Urbanna.

Organized under the auspices of the Business Men's Association of Fredericksburg, in the interest of Rappahannock Valley Trade.

FREDERICKSBURG, VA., *May 14th*, 1903.

The People's Steamboat Co.

To A. B. Evans, Dr.

To wharfage for January, February and March, 1903, at Waterview,..... $2.66

Check enclosed.

Rec'd Payment per check,

A. B. EVANS.

Wm. Douglass Carter, President; A. W. Embrey, Vice-President; A. Randolph Howard, Treasurer.

No. 1102.

Capital $50,000.00.

URBANNA, VA.-FREDERICKSBURG, VA., *May* 14, 1903.

Pay to the order of A. B. Evans, $2.66
Two ..... 66/100 Dollars.

Wharfage Jan'y Feb'y M'ch 1903.

THE PEOPLE'S STEAMBOAT COMPANY.
A. RANDOLPH HOWARD, *Treasurer.*

The Bank of Middlesex.
Urbanna, Va.

Waterview.

(Paid.)

27—181

515

Endorsed.

Pay to the order of A. B. Evans,

A. B. Evans,

T. B. Evans.

Pay to Citizens' National Bank,

or order.

W. R. B. Hundley.

Pay any Bank or Banker,

or order.

Citizens' National Bank,

of Baltimore, Md.

Endorsement guaranteed.

Wm. H. O'Connell, Cashier.

Pay Bank of Middlesex, Urbanna, Va., or order.

The State Bank of Virginia, Richmond, Va.,

William M. Hill, Cashier.

Wm. Douglass Carter, President; A. W. Embrey, Vice-President;
A. Randolph Howard, Treasurer.

No. 1183.

The People's Steamboat Company,

Capital, $50,000.00.

URBANA, VA.-FREDERICKSBURG, VA., *July* 10, 1903.

Pay to the order of a Browne Evans, $3.26.

Three.....26/100 Dollars

Wharfage Apl. May June, 1903.

THE PEOPLE'S STEAMBOAT
COMPANY,
A. RANDOLPH HOWARD,
Treasurer.

The Bank of Middlesex.
Urbanna, Va.

Waterview.
(Paid.)

Endorsed.

A. B. Evans.

516 DEFENDANT'S EXHIBIT "J." Filed with Depositions and Returned with Special Master's Report.

Wm. Douglass Carter, President; A. W. Embrey, Vice-President; A. Randolph Howard, Treasurer.

The People's Steamboat Company,

No. 1179.

Capital, $50,000.00.

URBANNA, VA.-FREDERICKSBURG, VA., *July* 10, 1903.

Pay to the order of R. G. Neale, $7.11.

Seven.....11/100 Dollars.

Wharfage Apl. May & June, 1903.

THE PEOPLE'S STEAMBOAT COMPANY,
A. R. HOWARD, *Treasurer.*

The Bank of Middlesex.
Urbanna, Va.

Bowlers.
(Paid.)

Endorsed.

R. G. Neale.

Pay to the order of

National Exchange Bank,

Clarke & Jones.

Pay to the order of

Any Bank or Trust Co.,

July 20, 1903.

The National Exchange Bank,

of Baltimore, Md.

R. Vinton Lansdale, Cashier.

517 DEFENDANT'S EXHIBIT "K." Filed with Depositions and Returned with Special Master's Report.

Wm. Douglass Carter, President; A. W. Embrey, Vice-President; A. Randolph Howard, Treasurer.

The People's Steamboat Company,

No. 1095.

Capital, $50,000.00.

URBANNA, VA.-FREDERICKSBURG, VA., *May* 14, 1903.

Pay to the order of J. H. Carter, $4.77.

Four.....77/100 Dollars.

Carter's wharfage Jany. Feby. Mch. 1903.

THE PEOPLE'S STEAMBOAT COMPANY,
A. RANDOLPH HOWARD,
Treasurer.

The Bank of Middlesex.
Urbanna, Va.

(Paid.)

Endorsed.

J. H. Carter by

Mrs. M. J. Carter, Admx.

Eva M. Carter.

Pay to the order of

The Bank of Middlesex.

Urbanna, Va.

The Conway, Gordon & Garnett National Bank

of Fredericksburg, Va.

518 DEFENDANT'S EXHIBIT "L." Filed with Depositions and Returned with Special Master's Report.

BAY PORT, VA., *May* 26/1903.

A. Randolph Howard, Treas. People's Steamboat Co.

DEAR SIR: I herewith return the checks sent me for wharfage due Monaskon & Bay Port wharves, as having leased these wharves to the Weems Steamboat Co., for the year 1903, I presume that Co., is

the proper party to receive these checks, or to whom this amount should be paid.

I am, very respectfully,

B. L. FARINHOLT.

Wm. Douglass Carter, President; A. W. Embrey, Vice-President; A. Randolph Howard, Treasurer.

No. 1098.

The People's Steamboat Company,

Capital, $50,000.00.

URBANNA, VA.-FREDERICKSBURG, VA., *May* 14, 1903.

Pay to the order of B. L. Farinholt, $10.31.

Ten.....31/100 Dollars

Wharfage Jany. Feby. Mch. 1903.

THE PEOPLE'S STEAMBOAT COMPANY,
A. RANDOLPH HOWARD,
Treasurer.

The Bank of Middlesex.
Urbanna, Va.

Bay Port.

Wm. Douglass Carter, President; A. W. Embrey, Vice-President; A. Randolph Howard, Treasurer.

The People's Steamboat Company,

Capital, $50,000.00.

519 URBANNA, VA.-FREDERICKSBURG, VA., *May* 14, 1903.

Pay to the order of B. L. Farinholt, $3.21.

Three.....21/100 Dollars.

Wharfage Jany. Feb. Mch. 1903.

THE PEOPLE'S STEAMBOAT COMPANY,
A. RANDOLPH HOWARD,
Treasurer.

The Bank of Middlesex.
Urbanna, Va.

Monaskon.

DEFENDANT'S EXHIBIT "M." Filed with Depositions and Returned with Special Master's Report.

Received of People's Steamboat line Ten Dollars on a/c of Wharfage Apl. 30th, 1903.

T. D. MARKS.

DEFENDANT'S EXHIBIT "N." Filed with Depositions and Returned with Special Master's Report.

VIRGINIA:

At County Court continued and held for Richmond County at the Court house thereof on Tuesday the 8th day of July, 1890.

In the matter of a new public road to Pittsville Wharf The report of viewers Wellford, Garland and Rains this day being made—The Court adopts the same and decides to open the said road and refers the matter of expenditure of the fifty dollars therein mentioned to the Board of Supervisors of Richmond County, with the direction that if to them it may seem fit and proper, the same be made.

A Copy—Teste: J. B. RAINS, *Clerk*.

NOTE.—Pittsville Whf. was afterwards called Wellford's Whf.

J. B. RAINS.

520 DEFENDANT'S EXHIBIT "O." Filed with Depositions and Returned with Special Master's Report.

VIRGINIA:

At a County Court continued and held for Richmond County at the Court house thereof on Tuesday the 14th day of June, 1887.

This day R. C. Wellford who was appointed at the last May term a commissioner to inspect a bridge when completed at the mouth of Cat Point Creek, this day filed his report setting forth that said bridge has been completed and is a good and substantial bridge and it appearing to the Court from said report, that said bridge is built with a good draw therein, and it further appearing to the Court that the owners of the lands lying on both sides of the said creek and adjacent to the points where the said bridge is built have dedicated a good public road thirty feet wide to the same through said lands, that is to say: a road from said bridge to Tappahannock Ferry road and a road from said bridge to the road leading from Porridge Pot by Cherry Hill to Cat Point Ferry, and a road from said Bridge to Naylor's wharf, it is ordered by the court that said bridge be, and the same is accepted as a public county bridge and it is further ordered that said roads dedicated as aforesaid be accepted as public roads. It appearing to the court that J. D. Garland, the contractor, is entitled to the $500 the part of the costs of the construction of said bridge which the court determined at the last January term as the full amount to be

expended by this county, it is ordered that the sum of five hundred dollars be paid to the said contractor J. D. Garland, out of the county levy, which is certified to the Board of Supervisors of Richmond County for payment.

Copy—Teste: J. B. RAINS, *Clerk.*

VIRGINIA:

At a County Court continued and held for Richmond County at the Court house thereof on Tuesday the 14th day of June, 1887.

It is ordered that the section of road leading from Cat Point bridge to Tappahannock ferry road be attached to Road Precinct No. 3 of Marshall Magisterial District in this county.

Copy—Teste: J. B. RAINS, *Clerk.*

521 VIRGINIA:

At a County Court continued and held for Richmond County at the Court house thereof on Tuesday the 14th day of June, 1887.

It is ordered that the section of road leading from Cat Point bridge to road leading from Porridge Pot by Cherry Hill to Cat Point Ferry and the section of road leading from said bridge to Naylor's wharf be attached to Road Precinct No. 8 of Stonewall Magisterial District in this county.

Copy—Teste: J. B. RAINS, *Clerk.*

VIRGINIA:

At a County Court continued and held for Richmond County at the Court house thereof on Tuesday the 14th day of June, 1887.

Joshua Waddington and John R. Peed are allowed to continue the use of the present gates across the sections of road this day accepted for public use.

Copy—Teste: J. B. RAINS, *Clerk.*

DEFENDANT'S EXHIBIT "P." Filed with Depositions and Returned with Special Master's Report.

VIRGINIA:

At a County Court begun and held for Richmond County at the Court house thereof on Monday the 2nd day of June 1879. Upon the petition of Jas. B. McCarty & others &c. &c., J. W. Chinn and J. L. Motley, Jr., two of the persons appointed to view the ground along which Jas. B. McCarty & others, in the petition aforesaid have applied to have a road conducted and established this day made their report in these words:

VIRGINIA, *To-wit:*

To Hon. Thomas Jones, Judge of the County Court of Richmond County, Greeting:

We, the undersigned, appointed at the April term last of the court to view and report as to the conveniences or inconveniences that will result from the opening of a public road from the village of
522 Milton in this county, to the public road leading from Farnham bridge to Union wharf, and also as to a road to connect the said Union wharf road with the road from Farnham bridge to the village of Farnham Church by way of Peacock hill respectfully report: They have given the matter the most thorough and complete attention, and find the opening of the road above mentioned not only required for the convenience of a small community, but a public necessity for a very large portion of the county. The village of Milton, the terminus of the proposed road, is the location of one of the most important steam boat wharves on the river, and is itself a place of considerable trade having within its limits, several stores, a steam canning mill, blacksmith's shop, wheel rights' shops &c.

With regard to the matter of damages we find that they will be slight in comparison to the advantages secured to the public. That, the road leading from Milton to the public road occupies, for the distance of one and a half miles, the Eastern boundary of the farm known as "Milden Hall" the property of Revd. C. L. Clausen, and runs N. 15° E. with but slight variation. This road the proprietor, with commendable liberality, offers to donate to the public, upon the single condition that, for the period of one year, he shall be permitted to keep a gate at the upper end of the road, as otherwise his crops would be subjected to constant depredation, unless protected by a heavy outlay in the article of fencing. Allowing an average width of thirty feet, the road then runs in length as follows: One hundred yards through the lands of O. L. Davenport, which we condemn at *five dollars* per acre: then (330) three hundred and thirty yards through the land of Dr. J. L. Motley, condemned at (No charge) per acre: then four hundred and eighty (480) yards, through the land of Miss Roberta Davenport and Melville Biscoe which we condemn at *five dollars* per acre: then two hundred (200) yards through a tract of cultivated land, the property of Dr. J. L. Motley, passing by the edge of a dwelling house yard and separating it from a small out-house: and necessitating a double line of fence to form a lane: at the end of which we enter the public road. We assess the damages in this instance at fifty dollars ($50.00) The road to this point is comparatively a straight line running North by a few degrees East, except the last 200 yards which incline North 10° West. Now following the public road leading to Farnham bridge for about 510 yards N. E. we come upon an old disused road, following which for the distance of six hundred and forty —, we reach the public road at the foot of Peacock Hill. This last road passes through a tract of low, uninclosed wood land, the property of

(as far as can be ascertained) William Tomson, which we
523 condemn and assess the damages at *five dollars* per acre.—
Your committee would state that to the best of their ability they have made a fair and impartial report; that the roads they have surveyed and condemned do not pass through any orchard yard or garden, unless so considered in the case of the 200 yards through the open field of Dr. Motley. They believe the damages allowed will be acceptable to all the parties interested, and that no writ of *ad quod damnum* will be necessary; And we will add, should the court decide favorably as to the road, our earnest solicitation that your Honor will order the road to be at once placed in charge of a surveyor, as portions of it are now in a condition dangerous to the travelling public. We append herewith a rough diagram of the road, and beg to be discharged from further duty in the matter.

Respectfully,

J. W. CHINN.
JAMES L. MOTLEY, JR.

On consideration whereof the court doth order that said report be confirmed and that said roads applied for be established and opened as public roads.

Copy—Teste: J. B. RAINS, *Clerk*.

NOTE.—Milton is now called Sharp's.

J. B. R.

DEFENDANT'S EXHIBIT "Q." Filed with Depositions and Returned with Special Master's Report.

Deed Book 52, Page- 286 & '7.

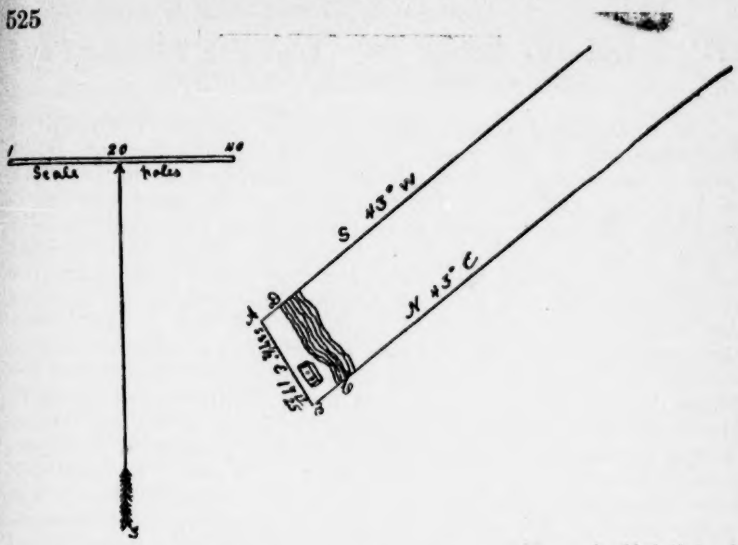
This deed made this 25th day of April, in the year of our Lord eighteen hundred and sixty six between Christopher Grammar, trustee for Elizabeth Thornton, of the one part, Champe B. Thornton and Elizabeth Thornton, his wife, of the second part, and Jacob Tome, Robert Alexander Taylor, Joseph J. Taylor & John S. Gettings, of the city of Baltimore, and State of Maryland, of the third part. Witnesseth, that the said parties hereto of the first part and the second part, in consideration of the sum of fifteen hundred dollars to them in hand paid by the parties hereto of the third part, the receipt whereof is by the execution of these presents acknowledged, have granted, bargained and sold and conveyed, and by these presents do grant, bargain and sell and convey unto the said parties hereto of the third part, their heirs and assigns in fee simple
524 (the said Christopher Grammar, as trustee, with special warranty and the said Thornton and wife with general warranty), a certain lot of land situated in the town of Port Royal, in the County of Caroline, in the State of Virginia, thus described, to-wit, beginning for the same at the centre of a large planted granite stone marked B, in Charles E. Gibbs' line (corner to C. B. Thornton and J. J. Taylor and Co. three poles, horizontal measure

from high water mark of the Rappahannock river, thence South 37½° East seventeen poles, and seventeen twenty-fifths of a pole to the said line of the street; thence with said side line North 43° East to the Channel of the river, thence up and with said channel to a point opposite the point of beginning; thence South 43° west to the point of beginning. Together with all the improvements, rights, privileges and appurtenances to said lot of land belonging or in any wise appertaining, excepting the right of way to and from the public ferry held by said Christopher Grammar, as trustee for said Elizabeth Thornton, which now lands upon and uses for ferry purposes a portion of the wharf upon the lot of land hereby conveyed to the parties of the second part; the right to use said wharf and landing for the ferry purposes is hereby reserved so long as said ferry may be held in trust for the said Elizabeth Thornton, and it is hereby understood and agreed that should any portion of said wharf be upon or in the public road or street, or upon the land of any private individual the said Elizabeth Thornton hereby covenants and agrees, and binds her separate property to indemnify the said parties of the second part for any loss they may hereafter sustain by eviction or by the use without remuneration of any portion of said wharf by other persons; in the event that any portion of the said wharf is upon or in the public road or street, or upon the land of any private individual. A plat of said land hereby conveyed is herewith attached, and is to be taken as a part of this deed. To have and to hold to the said parties of the third part their heirs and assigns the said land in the following proportions, to-wit, to said Jacob Tome, his heirs and assigns one hundred and seventeen, four hundre-ths thereof, to said Robert Alexr. Taylor one hundred and seventeen four hundre-ths thereof, to him his heirs and assigns, to said Joseph James Taylor his heirs and assigns one *one* hundred and sixteen four hundre-ths thereof, and to said John S. Gettings his heirs and assigns fifty-four hundre-ths thereof.

Witness their hands and seals on the day and year first above written.

CHRISTR. GRAMMAR. [SEAL.]
CHAMPE B. THORNTON. [SEAL.]
ELIZABETH THORNTON. [SEAL.]

525



A is a large planted stone in Gibbs' yard
B is a point in said line of street
C is a point at high water mark
D is a point at high water mark
A. D. is 3 poles
B. C. is 6 4/5 poles
A. B. passes 20 feet to right of large willow & cuts off ten feet of level earth from top of bank near B.

The foregoing is a true copy from the records of Caroline County Court Deed Book 52, pages 286, 287, and 290 of deed and plat not including the acknowledgements and certificates of surveyor—

Teste: E. R. COGHILL.

August 26, 1903.

DEFENDANT'S EXHIBIT "R." Filed with Depositions and Returned with Special Master's Report.

VIRGINIA:

At a County Court continued and held for the County of Lancaster at the Court house thereof on the 17th day of August, 1896.

It is ordered by the court that the public road from Morattico gate to Whealton's wharf be opened at a cost not exceeding $75.00, under section 956 Code 1887.

A Copy—Teste: WM. CHILTON, *Clerk.*

526 DEFENDANT'S EXHIBIT "S." Filed with Depositions and Returned with Special Master's Report.

The undersigned commissioner of roads for the Township of Rappahannock in the County of Essex having in pursuance of an order of the county court of said county bearing date the 18th day of May 1874 and to me directed, examined the route and lands on which the road proposed to be opened from Dunnsville in said county to the land of R. L. Ware, respectfully reports that the road will pass along an old road which has been used by the public for time immemorial, is a lane and dividing line between the lands of Jas. A. Dunn from the lands of Ro. Kriete and Wm. L. Haile from the terminus of this lane; the road should run in nearly or quite a straight line to a large white oak at the junction of the lands of the Misses Young and a tract of land called Cauthorns belonging to Mr. R. H. Waring, and thence along the lands of the said Misses Young as near the Northern line thereof as practicable to a gate opening into the lands of the said Robt. L. Ware. This road will be of incalculable advantage not only to the immediate vicinity but to the people of the surrounding country in giving them access to Ware's wharf, recently erected and from which large quantities of produce are shipped &c. &c. It cannot injure any one and as beforesaid will be of very great advantage to all especially to those residing on the river who now have no public outlet to the main county road. The proposed road will not pass over or through any yard, garden or orchard or any part thereof. The road as proposed would pass over the lands of Messrs. R. Kriete, Jas. A. Dunn and that of Misses Caroline, Mary E. and F. M. Young and a very small piece of the land of R. H. Waring and your commissioner is advised that none of these parties claim any damages, believing that the opening and keeping in repair of the proposed road would be ample compensation.

All of which is respectfully reported.

ALBERT LANE,
Commissioner of Roads.

We the undersigned over whose land the proposed road would pass claim no damages and waive all right to any summons
527 for us to show cause why the road should not be opened. We hereby give our entire consent thereto.

RICHD. H. WARING.
C. E. YOUNG.
M. E. YOUNG.
M. F. YOUNG.
E. W. KRIETE.
JAMES A. DUNN.

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

To the Judge of the County Court of Essex:

Your petitioners respectfully represent that Robt. L. Ware, Esq., has recently erected at Water View, the place of his residence on the Rappahannock river a wharf at which the steamers plying between Baltimore and Fredericksburg, stop four times a week; and other crafts as occasion requires, which wharf has proven to be a great convenience and advantage to the public, and would be of incalculable advantage if a public road was opened to the land of said Robt. L. Ware. Your petitioners therefore pray that a public road may be opened, beginning at Dunnsville and running along the old road between the lands of James A. Dunn and —— Kriete and Wm. I. Haile, to the lands of the Misses Caroline, Mary E. and Margaret Young, terminating at a line between the lands of the said Robt. L. Ware and the Misses Young at a point where there is at present a road leading from Water View gate across the lands of the said Misses Young.

Your petitioners would further represent that while the opening of this road can not and will not injure any one, it will be of infinite advantage to the whole surrounding country, not only to those who desire the use and advantage of the said wharf, but to those parties residing on the river who have no public outlet. Your petitioners are advised that neither Messrs. J. A. Dunn, —— Kriete and Wm. J. Haile, over whose lands the proposed road will pass ask any compensation whatever for the land to be used for the purpose aforesaid. And your petitioners will pray &c.

	WM. CAMPBELL.	R. SAUNDERS.
	E. W. KRIETE.	THOS. L. WARING.
528	his	
	Alex. X RANSOM.	ROBT. PAYNE WARING.
	mark	
	JOHN M. VIMS.	SAMUEL DAVIS.
	RANDALL SEGAR.	OTHO A. SAUNDERS.
	G. W. BOOTH.	J. G. ATKINS.
	R. H. WARING.	LEWIS H. GARNETT.
	W. C. GARNETT.	R. C. PHILLIPS.
	CHAS. H. AINSLE.	E. M. WARE.
	ED. R. BOUGHAM.	E. C. WILMORE.
	A. DERIEUX.	JAMES A. DUNN.
	WM. I. HAILE.	JNO. T. T. HUNDLEY.
	WM. P. ROBINSON.	WM. G. NEWBILL.
	D. SCOTT.	H. LOGAN NEWBILL.
	I. SCOTT.	S. W. MITCHELL.

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

VIRGINIA:

In Essex County Court, July 23rd, 1874.

Upon the petition of Wm. Campbell, E. W. Kriete, Alexander Ransome and others, whose names are *appointed* to the said petition, to have a public road, beginning at Dunnsville and running along the

old road, between the lands of James A. Dunn and —— Kriete and Wm. I. Haile to the lands of the Misses Caroline, Mary E. and Margaret Young terminating at a line between the lands of Robt. L. Ware and the Misses Young at a point where there is at present a road leading from Water View gate across the lands of the said Misses Young. The report of Albert Lane, Commissioner of road in Rappahannock Township, with a map or diagram of the route of the said road as above described having been this day returned, is ordered to be filed in the papers in this proceding, and the court not being against the opening of the said road, and the tenants and proprietors of the lands through and over which the proposed road will run, desiring the said road to be opened, and waiving the right to have a summons awarded against them, to show cause
529 against the opening of the said road and the said tenants and proprietors relinquishing all claim to any damages because of the opening of the said road; the court doth upon the report and diagram aforesaid, and other evidence before it, establish the said road as asked for by the petitioners, the legal costs of the application of the petitioners to be paid by Rappahannock Township in this county. And it is ordered that Muscoe Garnett, Jr., the surveyor of the public roads in the vicinity of the road so to be opened, with the hands under his control as such surveyor, open the said road and that the said surveyor see that the said road be put in good order, according to law, and that the said surveyor keep the same in good order with the other roads of which he is surveyor, with the hands which work on the other roads, and if the expense of opening the said road shall exceed any expenditures, which the said surveyor is legally authorized to pay for opening the said road, then such extra expense be paid by the said Township; and that the surveyor report to the court his proceedings and that the said new road be placed upon the road docket of the said township.

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

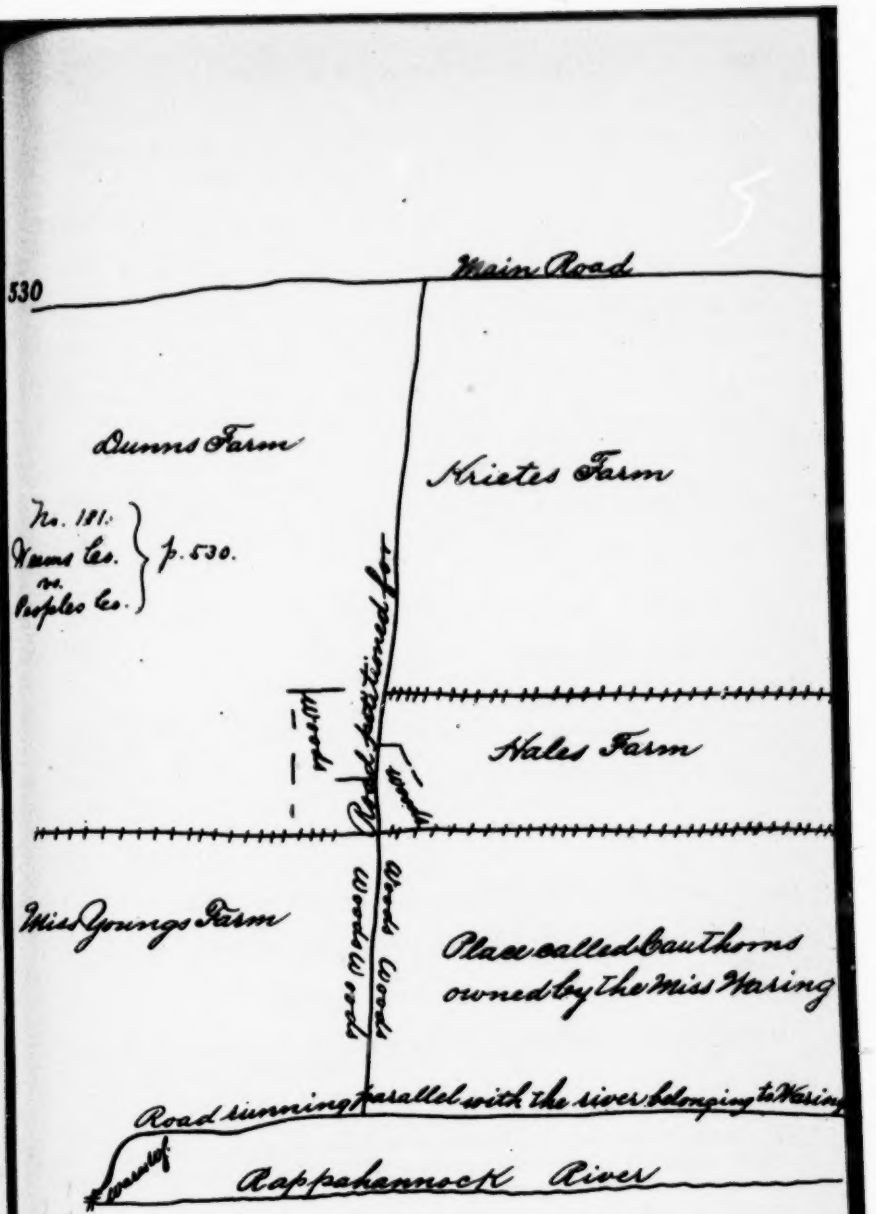
STATE OF VIRGINIA, *County of Essex, To-wit:*

I, H. Southworth, Clerk of the County Court for the County and State aforesaid do certify that the foregoing is a true copy from the records of the said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 14th day of August, 1903.

[SEAL.] H. SOUTHWORTH, *Clerk.*

(Here follows diagram marked p. 530.)



Traced by:- C.J. Rosiker - Jan. 25.1906.

531 DEFENDANT'S EXHIBIT "T." Filed with Depositions and Returned with Special Master's Report.

VIRGINIA, *Essex County, To-wit:*

In the County Court of the said County — Essex.

The jurors of the Commonwealth of Virginia in and for the County of Essex and now attending the said court, upon their oath present that Milton Neale on the 30 day of November, 1876, in the said county and within the jurisdiction of the said court, at Bowler's did obstruct the County Landing being a part of the public highway of said county of Essex, by erecting a fence on and across the same, against the form of the statute in such case made and provided and against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of Henry L. Newbill, witness sworn in open court and sent to the Grand Jury to give evidence.

T. P. BOUGHAN, *Foreman.*

We, the jury, find the defendant guilty & assess the fine at one cent.

WM. T. HOUSTON.

A copy of indictment found by the Grand Jury in the County Court of Essex County on the 15th day of January, 1877, —— *vs.* Milton Neale.

Teste: H. SOUTHWORTH, *Clerk.*

532 VIRGINIA:

In Essex County Court, March 21st, 1877.

THE COMMONWEALTH OF VIRGINIA
against
MILTON NEALE, Defendant.

Upon a presentment of the grand jury made against the defendant on the 15th day of January, 1877.

Came the attorney prosecuting for the Commonwealth and also the defendant by his attorneys and the jury sworn on yesterday to try the issue in this prosecution appeared in court according to adjournment except Sampel Quisenberry who being solemnly called failed to appear and by consent of the attorney for the Commonwealth with the assent of the court and also the consent of the defendant the said Samuel Quisenberry is withdrawn from the panel and the trial of the issue in the prosecution is submitted to the other eleven jurors sworn on yesterday and having heard further evidence introduced as well in behalf of the Commonwealth as of the defendant are sent out of court to consider of their verdict and after some time returned into court with a verdict in these words, to-wit: "We,

the jury, find the defendant guilty and assess the fine at one cent. Wm. T. Houston. On the motion of the defendant to set aside the verdict of the jury and to award him a new trial on the ground that the said verdict is contrary to the law and the evidence, the court overruled the said motion. It is therefore considered by the court that the Commonwealth recover against the defendant the sum of one cent her fine aforesaid by the jury in form aforesaid assessed and also her costs by her about her prosecution in this behalf expended, and the defendant in mercy &c. And on motion of the defendant an appeal as of right is granted the defendant to this judgment to the next May term of the Circuit Court of this county upon the defendant executing a bond with security in the penalty of one hundred dollars conditioned according to law, the said surety to justify on oath as to the sufficiency of his estate to pay the penalty of the said bond, and it is by the consent of the attorney for the Commonwealth and of the defendant agreed that the prosecution is to be heard *de novo* in the said Circuit Court upon any legal evidence that may be introduced.

Memorandum at the trial of this prosecution the defendant excepted to the opinion of the court and tendered his bill of exceptions which he prays may be signed, sealed and enrolled and ordered to be made a part of the record in this prosecution, which is accordingly done.

A Copy—Teste: H. SOUTHWORTH, *Clerk.*

533 DEFENDANT'S EXHIBIT "U." Filed with Depositions and Returned with Special Master's Report.

VIRGINIA:

In Clerk's Office, Middlesex County Court.

Among other records in this office the following appears.

To the Hon. J. H. C. Jones, Judge of the County Court of Middlesex County:

The petition of John H. Perry, A. A. Bass and Thomas J. Dunn respectfully represents that they desire and hereby apply to the County Court aforesaid to have a public Landing established at or near Mason's Mill Landing on the Rappahannock river on or adjacent to the lands of which Edmund Montague late of the County of Middlesex now deceased, died possessed and if necessary a public road leading to said landing from some public road in said county.

Your petitioners represent that the petitioner Perry has built a pier or bulk head out in the said river to which the Steamboat comes in its passage up and down said river and your petitioners now contemplate building a bridge from said pier to the lands above described on the Middlesex shore. They therefore ask the appoint-

ment of three or more viewers to view the ground and report to the court.

A. B. EVANS,
Att'y for Petitioners.

In the County Court of Middlesex, August 25th, 1870.

Upon the petition of John H. Perry, A. A. Bass and Thos. J. Dunn for a public landing at or near Mason's Mill landing on the Rappahannock river on or adjacent to the lands of which Edmund H. Montague late of the County of Middlesex (now deceased) died possessed and a public road leading to same &c. It is ordered that W. A. Street, John Sadler, Ellison Daniel and E. T. Montague who are appointed viewers for the purpose after being first duly sworn do view the ground upon which the said landing and road is proposed to be established or located and report to the court the conveniences and inconveniences that will result as well to individuals as the public if such road or landing shall be established as proposed and especially whether any garden orchard or any part thereof will in such case have to be taken.

534 *Report of Viewers.*

Pursuant to the annexed order of the County Court of Middlesex bearing date May term 1870 the undersigned viewers having viewed the premises respectfully report that the public road leading from Mason's Mill reaches the shore of the Rappahannock river at the very point at which it is proposed to establish the public landing and runs from thence along said shore to Owen Hill. That the ground upon which said landing is proposed to be established consists of a barren sand beach of triangular form bounded on one side by an abrupt cliff on another by a marshy pool and on the other by the Rappahannock river.

That no yard, garden, orchard, &c., &c., &c. That the land upon which it is proposed to establish said landing belongs to the estate of the late Edmund H. Montague dec'd whose heirs at law are Thaddeus and C. D. Montague. The undersigned have no means of ascertaining whether the owners of said land require any compensation or not but are decidedly of opinion that the increased value of the remaining land would greatly overbalance that of the little spot of barren beach proposed to be taken which cannot exceed one fourth of an acre. The annexed diagram will more fully show the situation of the premises all which is respectfully submitted.

W. A. STREET,
JOHN A. SADLER,
E. T. MONTAGUE,
Viewers.

535

Order of Court.

Upon the petition of John H. Perry, A. A. Bass and Thomas J. Dunn for the establishment of a public landing on the Rappahannock river at or near Mason's Mill landing W. A. Street, J. A. Sadler and E. T. Montague the three persons appointed to view the premises and report this day made their report in writing and thereupon all the parties appeared in court and the land owner upon whose land the proposed landing is to be established appeared by counsel and waived the summons and thereupon the whole matter being considered the court is of the opinion that the said landing
536 should be established. It is ordered that the same be established and opened and that the owner of the land be paid

the said damages of one hundred dollars as appears from said report of the viewers.

At a County Court held for the County of Middlesex the 24th day of September, 1873, the following order was entered.

Upon the petition of B. L. Farinholt, N. B. Street, John A. Sadler and John A. Carlton for the privilege of erecting a wharf on the public landing at Mason's Mill landing. It appearing to the court that notice of this motion has been given as prescribed by law by advertisement at the court house door and near the said landing which being considered the court doth grant the petitioners the privilege of building and erecting a wharf on the said landing near the center 12 feet wide. And the court defers for its further order the fixing of the rates and charges of wharfage on said wharf.

The road leading from Jamaica by Mason's Mill and Bayport to Owen Hill was established before the war between the States and after diligent search I am unable to find any records relating to the same.

The road leading from Church View to Waterview wharf is the private property of Judge A. B. Evans. I have made diligent search of the records of the County Court and of the Board of Supervisors and cannot find anything of record relating to the same.

I hereby certify the foregoing extracts from records in relation to the establishment of public landing and wharf at Mason's mill landing and my certificates as to no record of the establishment of public road to Bayport or Mason's Mill landing and to Waterview landing are true. Given under my hand and the seal of the County Court this 14th day of August, 1903.

[SEAL.]

F. M. EASTMAN,
Clerk of County Court.

537 DEFENDANT'S EXHIBIT "V." Filed with Depositions and Returned with Special Master's Report.

List of public roads in Washington District of Westmoreland County.

Road No. 1—From foot of Grant's Hill to Foneswood, with a branch road to Beaver Dam Swamp.

Road No. 2—From Ephesus church to Weaver's.

Road No. 3—From fork near Songwood gate to Rust's New road.

Road No. 4—From fork of "Rust's new road" to Layton's ferry.

Road No. 5—"From the Rectory fork to corner of Massey's fence."

Road No. 6—From Layton's ferry gate to Dr. Wirt's Ice pond.

Road No. 7—From Wm. Taylor's gate by Leedstown to Walnut Hill gate.

Road No. 8—From Troy gate to fork of road above Claymont.

Road No. 9—From Dr. Wirt's Ice Pond to King George line.

Road No. 10—From fork of road near John Barker's to Oak Grove, with branch from the Cold. Society Hall to R. W. McGinness.

Road No. 11—From fork of road near R. J. Washington's to Oak Grove.

Road No. 12—From Oak Grove to Mattos bridge.

Road No. 13—From Potomac Mills to Haywood's fork.
Road No. 14—From Haywood's fork to Oak Grove.
Road No. 15—From Potomac Mills to Mrs. Jones' gate.
Road No. 16—From Mrs. Jones' gate to Bank road near Shaw's Mount.
Road No. 17—From Bluff Point gate to fork of road North of Rollin's store.
Road No. 18—From fork North of Rollin's store to Mattox road.
Road No. 19—From Mattox bridge to fork near Broad field.
Road No. 20—From fork near Broad field to Richard's shop.
Road No. 21—From Richard's shop to King George line.
Road No. 22—From Bluff Point gate to King George line near King's Mill.
Road No. 23—From fork near Broad field over Wolf trap to King George line called Wolf trap road.
538 Road No. 24—From the angle of ditch with the old Millvill road near Rollin's store in a Westerly direction to where it intersects with the Oak Grove & Fredericksburg road.
Road No. 25—From a point on New road near Wm. Tate's house to Potomac Mills.
Teste: J. W. HUTT, *Clerk.*

DEFENDANT'S EXHIBIT "W." Filed with Depositions and Returned with Special Master's Report.

VIRGINIA:

At a meeting of the Board of Supervisors of Lancaster County held at the Court house thereof on 27th of July, 1896.
It is ordered by the Board of Supervisors, two-thirds of the members present agreeing, that the sum of $75.00 be expended in opening and making the public road leading from Morattoci Gate to Whealton's wharf. And this action of the Board is ordered to be certified to the County Court of Lancaster County.

VIRGINIA:

At a meeting of the Board of Supervisors of Lancaster County held at the Court house thereof on the 23rd day of December, 1896.
T. E. Haynie is allowed his claim for lumber for bridge near Whealton, $9.20.
T. E. Haynie is allowed his claim for work of self & hands in opening new road to Whealton's wharf. $34.37.

VIRGINIA:

At a meeting of the Board of Supervisors of Lancaster County, held at the Court house thereof on the 19th day of May, 1897.
T. S. Curlett is allowed his claim for land taken for public road leading from Whealton Whf. to Whealton Gate.

VIRGINIA:

At a called road meeting of the Board of Supervisors of Lancaster County held at the C. H. thereof on the 18th day of Jany., 1899.

F. G. Lankford is allowed his claim for $3,500 bu. shells on road, payable out of Whf. Chapel Road Fund.

(NOTE.—Shells used on new road to Whealton's Whf.)

539 STATE OF VIRGINIA,
County of Lancaster, To-wit:

I, Wm. Chilton, Clerk of the Board of Supervisors for the county aforesaid in the State of Virginia, do certify that the foregoing is a true copy from the records of the proceedings of said Board of Supervisors.

Given under my hand this 31st day of August, 1903.

WM. CHILTON, *Clerk.*

DEFENDANT'S EXHIBIT "X." Filed with Depositions and Returned with Special Master's Report.

Marshall Magisterial District.

Road Precinct No. 6—added Feb. 3rd, 1891, running from Northern Fork down the Neck to Wellford's Wharf and including branch road to Oak Hill gate.

I hereby certify that the above is a true copy from the Road Docket of my office.

J. B. RAINS,
Clerk Co. Ct., Richd. Co., Va.

VIRGINIA:

At a meeting of the Board of Supervisors of Richmond County held at the Court house thereof on Monday the 28th day of July, 1890.

In the matter of the order of the County Court of July term 1890, the Board decides that the Board will expend in opening the new road to Pittsville Wharf referred to in said order, fifty dollars and no more.

Copy—Teste: J. B. RAINS, *Clerk.*

540 DEFENDANT'S EXHIBIT "Y." Filed with Depositions and Returned with Special Master's Report.

VIRGINIA:

At a meeting of the Board of Supervisors held for Richmond County at the Court house thereof on Thursday the 17th day of June, 1880.

In the matter of establishing a public road to Carter's wharf (including landing at same wharf) J. W. Chinn, Wm. F. Brocken-

brough, A. J. Yeatman, and T. N. Balderson, supervisors voting in the affirmative. It is ordered that the Board of Supervisors determining that the expenditures of $141.22, that is $127.10 a part thereof to be paid to Allen Middleton and $14.12 the remainder thereof to be paid to Miskel A. Carter, the proprietors of the lands on which it is proposed to establish said road and landing is deemed proper. The clerk is directed to certify this order to the County Court.

Copy—Teste: J. B. RAINS, *Clerk.*

VIRGINIA:

At a County Court begun and held for County at the Court house thereof on Monday the 5th day of July, 1880.

In the matter of establishing a public road from a point on the road leading from Stoney Hill to Beaver Dam to Carter's wharf and landing near same.

This matter having been referred to the Board of Supervisors to fix the amount of expenditures with which the county shall be charged and the order of said Board having been this day certified to the court; in pursuance thereof the court doth allow the sum of $127.10 to Allen Middleton, and the sum of $14.12 to Miskel A. Carter, and doth order that the said amounts be certified to the Board of Supervisors for payment. And the court orders that leave be given to the said petitioners to open the said road and to establish the said landing as prayed for. And doth order that the said road be and it is hereby added to and made a part of the precinct No. 1 in Stonewall Magisterial District, of which precinct James A. B. Saunders is surveyor of road.

A Copy—Teste: J. B. RAINS, *Clerk.*

541 Stonewall Magisterial District.

Road Precinct No. 1.

Leading from the Beaver Dam run to Porridge Pot and including road to Carter's Wharf and landing near same from Stony Hill to Beaver Dam (added July 5, 1880.)

I hereby certify that the above is a true copy from the Road Docket of my office.

J. B. RAINS,
Clerk Co. Ct. Richd. Co., Va.

VIRGINIA:

At a meeting of the Board of Supervisors held for Richmond County at the Courthouse thereof on Thursday February 17th, 1881.

The Board continuing to audit state and consider claims against Richmond County and find Richmond County, Dr.

31 To Allen Middletown for damages upon opening a public road from Stony Hill &c. to Carter's Wf., 127.10

32 To Miskell A. Carter for damages on opening public road from Stony Hill &c. to Carter's Wf., 14.12.

I hereby certify that the above are true abstracts from the record of the Board of Supervisors of Richmond County.

J. B. RAINS,
Clerk Co. Ct. Richmond Co., Va.

DEFENDANT'S EXHIBIT "Z." Filed with Depositions and Returned with Special Master's Report.

Stonewall Magisterial District.

Road Precinct No. 8.

Leading from Porridge Pot by Cherry Hill to Cat Point Ferry section of road leading from Cat Point bridge to road leading from Porridge Pot by Cherry Hill to Cat Point Ferry and the section of road leading from said bridge to Naylor's wharf.

I hereby certify that the above is a true copy from the road docket of my office.

J. B. RAINS,
Clerk Co. Ct., Richd. Co., Va.

542 DEFENDANT'S EXHIBIT "A" "A." Filed with Depositions and Returned with Special Master's Report.

Washington Magisterial District.

Road Precinct No. 3.

Leading from Farnham Bridge to Folly Mill Swamp including the intersecting roads to Sharp's Wharf and West View.

I hereby certify that the above is a true copy from the Road Docket of my office.

J. B. RAINS,
Clerk Co. Ct., Richd. Co., Va.

Supplemental Report of Ernest M. Long, Special Master.

Filed November 10th, 1903.

To the Honorable Edmund Waddill, Jr., Judge of the Circuit Court of the United States for the Eastern District of Virginia:

The undersigned Special Master in the suit of Weems Steamboat Company *vs.* People's Steamboat Company, pending in said Court, begs leave to file herewith a supplemental report in the said matter, relating to the Tappahannock and Bayport wharf properties.

The Special Master begs leave to report that since the filing of his first report in this matter (said report having been filed in the Clerk's Office of the said Court on the 26th of October, 1903), he has visited the County Clerk's Offices of Middlesex and Essex Counties for the purpose of obtaining additional evidence in regard to the said wharf properties, and reports his findings as follows:

Tappahannock Wharf.

As disclosed by the testimony of witnesses, said testimony being taken in the City of Fredericksburg at various times, and heretofore returned marked "Depositions No. 1" and "Depositions No. 2," it appears that the general conditions prevailing at this point are similar in almost all respects to the conditions prevailing at all the wharves involved in this controversy, as follows:

543 It appears that the complainant company maintains an agent at this wharf (Depositions 1, p. 87); that the compensation received by said agent amounts to between four and five hundred dollars per year (Depos: 1, p. 99-; that the said agent has been instructed by the said complainant company not to permit the boat of the defendant company to land thereat (Depos: 1, p. 87); and that the boat of the defendant company does land, and has been landing thereat, under protest.

That there is a post office in the town of Tappahannock, and that mail is carried thereto and therefrom over the wharf structure (Depos: 1, p. 90); that a United States Custom House is maintained in the town of Tappahannock; that there are no obstructions along or about the shore end of the wharf, or the approaches thereto, to prevent free access to the said wharf structure (Depos: 1, p. 96; Depos: 2, p. 21); and that the public have free and uninterrupted use of the river shore around the shore end of the said wharf, and that they are in the habit of making use thereof, both by land and by water (Depos: 1, p. 96).

That a part of the said wharf structure, particularly the pier-head thereof, is in the navi*b*able waters of the Rappahannock River (Depos: 1, p. 98); that sailing vessels upon occasions moor at the said wharf (Depos: 1, p. 98); but that no wharfage is received from them (Depos: 1, p. 150), said sailing vessels being allowed to lie at said pier-head by special permission of the complainant company.

That the character of the freight shipped from the said wharf consists of the general products of the country, and the character of the freight received at the said wharf consists of general merchandise, &c. (Depos: 1, p. 100; 144); that the said wharf is the usual and regular shipping point for the inhabitants of the town of Tappahannock and for citizens of the county, and adjoining counties for some distance back in the interior (Depos: 1, p. 100; 2, p. 124); that the complainant company has heretofore posted notices on the said wharf structure warning against trespassing thereon (Depos: 1, p. 124): that the shore end of the said wharf structure is a sandy beach (Depos: 1, p. 174), and that the same abuts on the shore at a point between Queen Street and Prince Street, some distance south of Queen Street (Depos: 2, p. 23); that wharfage has been sent by the defendant company to the said complainant company, and said wharfage returned (Depos: 2, p. 73).

As to the Title to said Wharf Property.

From the Defendant's Exhibit "D," purporting to be a plat of the town of Tappahannock, according to a survey made
544 on the 13th day of July, 1706, by Harry Beverley, Surveyor, upon which said plat certain streets are regularly laid off, it might be inferred that, in so much as the lots therein numbered stop some distance short of the river shore, the said river shore had been dedicated to the public as a street; or for public use and it was for the purpose of inquiring into this matter that the Special Master desired to obtain additional evidence. Accordingly, on the 28th day of October, 1903, the Special Master examined the records in the Clerk's Office of the County Court of Essex County, in the town of Tappahannock, and found that subsequent to the said survey and plat the said river shore was laid off into lots, and the lots sold by the feoffees of the said town, as will more fully appear from the abstract of title of the said wharf property made by the Special Master, and herewith returned.

The Special Master finds that in 1744 a map of the town was made by one Robert Brooke, Gent., Surveyor, of the County of Essex, but the said Special Master, although assisted by the Clerk of the said County Court, was unable to find any record of the said plat made by Robert Brooke, as aforesaid. Information as to the said plat was obtained by the Special Master from 5 Henn. Stats. p. 304, in which it is said:

"And whereas the said lots (referring to lots in the town of Tappahannock) were by the said feoffees and trustees sold for the purposes in the said recited acts mentioned, and upon an exact survey of the bounds thereof, as the same were then laid out and have been since built upon, made the 31st day of August, 1744, by Robert Brooke, Gent. Surveyor of the County of Essex," &c.

It further appears from the deeds made by the said feoffees and trustees to James Mills and Archibald Richie, respectively, and set forth at length in the Special Master's said abstract, that a strip, or "Slipe of land lying between the said town (of Tappahannock) and the Rappahannock River, was (being) annexed to the said town by one act made by the General Assembly begun and held at Williamsburg on the 27th day of Octo' in the year of our Lord 1748, and ordered to be laid off into st[illegible]s and lanes, the said lots to be sold at auction for ready money," &c. The Special Master has made search for the act of the General Assembly referred to in the said deeds and finds it among the private acts of that session of the General Assembly, but the body of the act appears never to have been printed. The title of the act given in 6 Hen. Stats.
212, is as follows: "An act for annexing certain lands to the
545 town of Tappahannock, and vesting the same in the feoffees of the said town; and for other purposes therein mentioned."

From the said records in the said County Court of Essex County, as briefly set forth in the aforesaid abstract, the Special Master has been able to trace the title of this property from the year 1749, when

it was first sold by the feoffees of the said town under authority of the said act, by successive conveyances to the vesting of the same in the complainant company. It thus appears that the said river shore upon which the said wharf property abuts was not intended to be dedicated to the public, and that the said wharf structure abuts upon private property owned by the said complainant company; and for the reasons, and in accordance with the conclusions of law set forth in the Special Master's report filed herein on the said 26th day of October, 1903, the Special Master is of opinion that the said property should be included within the recommendations therein contained.

Abstract of Title to Tappahannock Wharf Property.

(1)

By deed dated the 29th day of September, 1749, from Benjamin Robinson, William Beverley, Alexander Parker and William Daingerfield, feoffees, in trust to James Mills.

Said deed recites as follows:

(D. B. 24, p. 366.)

"Whereas several laws have appointed and confirmed to the County of Essex fifty acres of land for a town called Tappahannock;

"And whereas, Benjamin Robinson, William Beverley, Alexander Parker and William Daingerfield, Gentlemen, are by order of said County Court appointed feoffees in trust to dispose and make sale of the said lands according to law, *and a slipe of land lying betwe-n the said land and Rappahannock River,* being annexed to the said town by one act made by the General Assembly begun and held at Williamsburg on the 27th day of October in the year of our Lord 1748, and ordered to be laid off into streets and lanes, and the said lots to be sold at auction for ready money;

"Now This Indenture Witnesseth, that William Beverley and William Daingerfield, two of the above named feoffees, for and in consideration of eight pounds and ten shillings current
546 money to them in hand paid by James Mills, of the aforesaid town of Tappahannock, have bargained and sold, and by these presents do bargain and sell, unto the said James Mills and to his heirs and assigns, one lot or parcel of land on the river shore in the said burg *of* town of Tappahannock, *being part of above-mentioned slipe of land* numbered 79 as by the survey and plan thereof made by Robert Brooke, Gent., Surveyor, will more plainly appear," &c.

Note by Special Master.

It appears from the plan of the said town, filed as Exhibit "D" by the defendant company, that the lots therein mentioned are numbered 1 to 72 consecutively. The Special Master infers that upon the plat made by Robert Brooke, Surveyor (which said plat the

Special Master was unable to find, as aforesaid) the lots along the river shore annexed to the said town by the aforesaid act, are consecutively numbered beginning with the next highest number, to-wit, 73, &c.

(2)

By deed dated the 7th day of April, 1750, from the said feoffees of the said town of Tappahannock, to Archibald Richie.

Said deed recites as follows: (D. B. 25, p. 319.)

"Whereas several laws have appointed and confirmed to the County of Essex fifty acres of land for the town called Tappahannock;

"And Whereas, Benjamin Robinson, William Beverley, Alexander Parker and William Daingerfield, Gentlemen, are by order of the said County Court appointed feoffees in trust to dispose and make sale of the said lands according to law, and a slipe of land lying between the said town and the Rappahannock River being annexed to the said town by one act made by the General Assembly begun and held at Williamsburg on the 27th day of October in the year of our Lord, 1748, and ordered to be laid off into streets and lanes, and the said lots to be sold at auction for ready money;

"Now This Indenture Witnesseth, that William Beverley and William Daingerfield, two of the above-mentioned feoffees, for and in consideration of the sum of thirty-one pounds, current money, to them in hand paid by Archibald Richie, of the aforesaid town of Tappahannock, have bargained and sold, and by these presents do bargain and sell unto the said Archibald Richie and to his heirs and assigns, one lot or parcel of land on the river side in the
547 said burg or town of Tappahannock being part of the above-mentioned slipe of land numbered 78, as by the survey and plan thereof made by Robert Brooke, Gent. Surveyor, will more plainly appear," &c.

(3)

By deed dated the 19th day of January, in the year 1763, James Mills conveyed to Archibald Richie, the said lot No. 79 in Robert Brooke's plan of Tappahannock.

D. B. 29, p. 202.

(4)

By his will admitted to probate in the said County Court on the 20th day of April, 1784, Archibald Richie devised and bequeathed all of his property, including the said lots Nos. 78 and 79 on the river shore, to his wife and children, mentioning the same therein by name.

Will Book, 13, p. 415.

(5)

By deed dated the 20th day of May, 1800, Archibald Richie and wife to William Hodgson. (Son of above named.)

Said deed recites as follows: (D. B. 35, p. 119.)

"This Indenture made this 20th day of May, in the year of our Lord 1800, between Archibald Richie and Martha, his wife, of the town of Tappahannock, in the County of Essex and State of Virginia, of the one part, and William Hodgson of the Town of Alexandria, Commonwealth aforesaid, of the other part, Witnesseth;

"That Whereas, the said Archibald Richie did by his certain deed indented dated the 25th day of September, 1798, convey to one Thomas Swan one piece or parcel of ground situate in the said town of Tappahannock on the Rappahannock River upon the southermost side of Prince Street, and bounded as follows, to-wit: 'Beginning on the line of the said Prince Street at the distance of ten feet from the intersection of the said line of Prince Street with the lower line of that lot designated in the plat of the said town by number 20, and run-ing thence with the line of the said Prince Street, and binding thereupon into the river Rappahannock; thence south sixty-six degrees easterly and parallel with the *lower lines of lots numbers*
20 *and* 24, *as far as the said lines extend, to-wit, the dis-*
548 *tance of sixteen poles;* thence south twenty-four degrees west and parallel with the line running from the beginning, the exact distance thereof; thence to the beginning;'

"Also one other piece or parcel of ground situate in the said town of Tappahannock on the southermost side of Queen Street and bounded as follows, to-wit: 'Beginning on the line of the said Queen Street at the distance of ten feet from the intersection of the said line of Queen Street with the lower line of lot No. 28, and running thence with the line of the said Queen Street and binding thereupon into the river Rappahannock; thence south sixty degrees east and parallel with the lower line of lot 28 the distance of eight poles; thence south twenty-four degrees west and parallel with a line running from the beginning the exact distance thereof; thence to the beginning;'

"Together with all buildings, houses, *wharfs*, streets, lanes, profits, commodities and advantages whatever thereto belonging or appertaining, in trust to secure payment of a debt in the said deed mentioned, due from the said Archibald Richie to the said William Hodgson, a party hereto.

* * * * * * *

"And Whereas, by consent of said Richie the said Thomas Swan has this day exposed to sale the said lots of ground and premises to the highest bidder for ready money, subject to the encumbrance or demand of the said Samuel Boulware, for the purpose of discharging the said debt with interest and charges secured by the said deed to be paid to the said William Hodgson; and on such sale the said William Hodgson became the purchaser thereof for the sum of 1792

pounds, and takes the said lots and premises under the said purchase subject to the said debt due to the said Samuel Boulware aforementioned," &c.

Note by Special Master.

From the fact that the lower line of the lot first mentioned in the aforesaid deed is said to be parallel to the lower lines of lots Nos. 20 and 24, and extends the exact distance of the said two lots, to-wit, 16 poles, the Special Master infers, and is of opinion, that the lots thereby conveyed abut in front of the said two lots Nos. 20 and 24, and that the other parcel of land conveyed in said deed by the description thereof stands just in front of, and at the termination of Queen Street on the Rappahannock River. It is true that in the said deed the said first mentioned lot is described as extending in a southerly direction, which would bring the said lot just under and parallel with lots Nos. 12 and 16 according to the plat filed
549 by the defendant company as its Exhibit "D;" but in so much as the said lot, as before-mentioned, is said to extend parallel with the lower lines of lots Nos. 20 and 24, and in so much as lots Nos. 12 and 16 are not mentioned in the said deed, the Special Master is of opinion that the direction given (southerly) must be an error. At all events the complainant company and its predecessors in title back to the year 1749, have been in free and uninterrupted possession and occupancy of the said parcel of ground (except as to the Wynn deed hereinafter mentioned), whose claim was acquired by the complainant Co., by deed, (Pltf's Exhibit No. 87).

(6)

By deed dated the 3rd day of September, 1800, William Hodgson and wife conveyed the said property above described, to Lawrence Muse.

D. B. 35, p. 374.

(7)

By deed dated the 30th day of December, 1810, Lawrence Muse conveyed the said property (mortgage deed) to John Reynolds.

Said deed recites (D. B. 38, p. 137) describing the property conveyed:

"All those several messuages, tenements, houses, &c. and the slipe of land in the town of Tappahannock *on the Rappahannock River* (adjoining the lot belonging to Benjamin Blake) formerly the property of Archibald Richie, including the brick storehouse, the house now occupied by Robert Weir as a storehouse, *the wharf and warehouse*, as specified more fully in a deed from William Hodgson to the said Lawrence Muse," &c.

By deed dated the 30th day of June, 1829, Thomas Mathers, Deputy Marshal, conveyed the said property to John W. Hoomes.

D. B. 43, p. 14.

It appears from this deed that the said property was sold under a decree of the Superior Court of Chancery for the Fredericksburg District, in the suit of Edwin Upshur, Admr. of John Rennolds, deceased, *vs.* Lawrence Muse. In the said deed the said property is described in identical terms employed in the preceding deed.

550 (9)

By deed dated the 30th day of June, 1829, John W. Hoomes and wife conveyed the said property to William Waller, Trustee for Martha Muse, wife of Lawrence Muse (equitable separate estate), in which said deed the same description of the said land is employed.

D. B. 43, p. 56.

(10)

By her will dated the 18th day of September, 1834, and admitted to probate in the County Court of Essex County on the 16th day of November, 1835, Martha Muse devises the said property to her grandson George Landon Hoomes, in fee.

Will Book 23, p. 423.

(11)

By deed dated the 15th day of May, 1838, William A. Wright and A. M. Braxton, Special Commissioners, conveyed the said property to John A. Parker.

D. B. 46, p. 35.

The said deed recites that the said Wright and Braxton are acting as Commissioners under a decree of the County Court of Essex, rendered in a cause in which the said A. M. Braxton, the legally qualified guardian of George Landon Hoomes, an infant, an orphan of John W. Hoomes, deceased, was plaintiff, and the said Landon Hoomes, John A. Hoomes and Martha Hoomes were defendants. Said deed further recites, in describing the said property:

"The lot and houses with the wharf attached, in the plaintiff's bill mentioned, being the same slipe or lot of land with the houses and wharf attached in the said town of Tappahannock, late the property of Martha Muse, deceased, and devised by her to the said George Landon Hoomes."

(12)

By deed dated the 29th day of June, 1841, John A. Parker and wife conveyed to James Harwood, Trustee for the Baltimore &

Rappahannock Steam Packet Company, "one-third part of
551 the wharf at the town of Tappahannock, Virginia, on the Rappahannock River, forever, together with one-third of the abutments upon which the wharf is built, and the free use of the whole."

(D. B. 47, p. 235.)

(13)

By deed dated the 16th day of September, 1846, John A. Parker and wife conveyed to Muscoe Garnet, agent and attorney for Sellman & Cook, "two-thirds of all that certain wharf and abutments, and the right of way to the same in the town of Tappahannock, and also the whole of the granary at the end of the said wharf, and the land on which the granary stands."

D. B. 49, p. 190.

(14)

By deed dated the 15th day of May, 1850, Muscoe Garnet, agent and attorney as aforesaid; James C. Sellman and Francis A. Cook, conveyed to James McConkey & Co., of Baltimore, Md., "All the right, title and interest which the said Muscoe Garnet, agent and attorney as aforesaid, has or acquired in and to the two-thirds of all that well known wharf and appurtenances situate lying and being in the County of Essex at Tappahannock, on the Rappahannock River. The metes and bounds and its appurtenances are more fully set forth and described in the deed from Parker and wife to said Garnet, Agent and Attorney.

D. B. 50, p. 8.

(15)

By deed dated the 18th day of April, 1854, James McConkey and Israel M. Parr (James McConkey & Co.) conveyed to the Maryland & Virginia Steam Packet Company two undivided third parts in and to all that "well known wharf and abutments, and the right of way to the same, in the town of Tappahannock, in the County of Essex and State of Virginia, with all the rights and appurtenances to the same belonging," &c.

D. B. 50, p. 547.

552 (16)

By deed dated the 31st day of January, 1855, Thomas S. Alexandria conveyed to the Maryland & Virginia Steam Packet Company the interest of the Baltimore & Rappahannock Steam Packet Company "in and to a certain wharf in the town of Tappahannock in

the State of Virginia, being the same interest which was conveyed to the said Company by one John A. Parker * * * The said interest being described in the said deed above mentioned as equal to one-third of the wharf, in fee simple, with the free use of the whole wharf."

D. B. 50, p. 688.

It appears from the said deed that the said Thomas S. Alexandria was appointed Receiver in the cause by the High Court of Chancery of the State of Maryland, in a cause therein depending in which Horace Abbott and others were complainants, and the Baltimore & Rappahannock Steam Packet Company were defendants.

Note by Special Master.

It thus appears from the last two mentioned deeds that the whole interest of John A. Parker in the said wharf property, was united in the said Maryland & Virginia Steam Packet Company.

(17)

By deed dated the 13th day of February, 1857, the Maryland & Virginia Steam Packet Company conveyed the said property to A. H. Jones.

D. B. 51, p. 67.

Note by Special Master.

The foregoing is a true abstract of title as appears from the records in the Clerk's Office of the said County Court of Essex County, as made by the Special Master on the said 28th day of October, 1903. The successive conveyances of the said property from Jones until the same was finally acquired by the complainant company, are fully set forth by the complainant in its Exhibits herein filed, numbered respectively, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91 and 92.

553 Bayport Wharf.

It appears, from the evidence taken in the City of Fredericksburg, Va., and heretofore returned by the Special Master, with his first report in this matter (marked Depositions Nos. 1. and 2.) that by deed dated the 14th day of July, 1870, B. L. Farinholt acquired from T. C. Montague and others the title to three acres of land on the shore of the Rappanannock river at or near a point then known as "Mason's Mill landing," said three acres of land having a frontage on the said river shore of about 400 yards; (Deps. No. 1. p. 5; Pltf's Exhibit No. 1).

And that, in the autumn of the same year (1870), the said B. L. Farinholt had a wharf built out into the said river, the shore

end of which said wharf abutted upon the said three acres of land, and that the said wharf was named "Bayport;" (Deps. No. 1, p. 3; deposition of B. L. F., taken by Special Master, p. — of this report).

And that subsequently, in the year 1892 the title to the said wharf property was conveyed to Mrs. Lelia M. Farinholt, wife of the said B. L. Farinholt, in whose name it now stands; (Deps. No. 1, p. 3; Pltf's Exhibit No. 1).

in whose name it now stands; (Deps. No. 1, p. 3; Pltf's Exhibit No. 2.)

That by an instrument under seal, dated the 3rd day of Jan. 1903, the said wharf property was leased to the Complainant Co., (Deps. No. 1. p. 6; Pltf's Exhibit "K").

That since the year 1885 the Complainant Company has, under a verbal agreement, paid wharfage for the use of the said wharf, but no agreement as to the exclusive use thereof appears to have existed until the said written lease was made, in Jan. 1903; (Deps. No. 1, p. 8).

It further appears that, sometime prior to the year 1885 a steamboat called the "Eliza Hancock" navigated the Rappahannock River, for a few months, and, during that time, stopped at said wharf, though no wharfage was received, by the said owner, for such use; and that since that time no other steamboat has made use of the said wharf, except the vessels of the Complainant Company, and the boat of the defendant company, under protest; (Deps. No. 1, p-. 8 and 9) and that the said owner accepted and received wharfage from the defendant company, for the use of the said wharf, during the year 1902, prior to the said lease of the exclusive use thereof by the complainant company, but that, though wharfage has been since tendered, by the defendant company, for such use during the year 1903, the same has been declined; (Deps. No. 1, p. 12; Deps. No. 2, p. 71).

554 That the pier-head of the said wharf is in the navigable waters of the said river; (Deps. No. 1, p. 9) and that a warehouse, for the storage of freight, etc., is erected on the said pier-head; (Deps. No. 1, p. 12).

That by special permission of the owner other vessels, freighted principally with coal, and occasionally rail-road ties, are permitted to moor at said wharf; (Deps. No. 1, p. 11).

That the shore end of said wharf abuts upon a sandy beach, (Deps. No. 2, p. 149) and that the said shore is open to the public use, and is used by the public in coming to said wharf; and shipping and receiving freight, etc., over said wharf; and that there are no obstructions, fences, gates, etc., preventing free access to said wharf and pier-head; (Deps. No. 1, p. 11; Deps. No. 2, pp. 3 and 6).

That the character of freight received over said wharf consists of general merchandise, and that general products of the country are shipped over said wharf; (Deps. No. 1, p .10).

That there is a Post Office, called Bayport, at this point, and that mail is received thereat and sent therefrom over the said wharf; (Deps. No. 1, p. 10; Deps. No. 2, p. 7).

And that a public road passes near the shore end of the said

wharf; (Deps. No. 2, p. 3) but, the Special Master finds, that there is no evidence tending to show that the said public road terminates at said wharf, or that the said shore end of the said wharf was erected upon any part of the said public road; there is evidence to the effect that a road along the shore existed before the said wharf was, originally, built, but in the deed from Montague and others to the said B. L. Farinholt, it is expressly stated that the said three acres is bounded *"on the West* by the public road leading from Mason's Mill to the Rappahannock River;"

It further appears the said owner employs an agent at said wharf, for the general purpose of attending to the receipt and shipping of freight, etc., assisting in mooring ves-els, etc. (Deps. No. 1, pp. 11 and 19) and that the repairs upon said wharf are paid by the said owner, the annual (average expense thereof being about $200.00; and that said wharf cost, to erect same, about $1600.00; (Deposition of B. L. F. taken by Special Master, P. — of this report).

The Special Master deferred reporting upon the Bayport wharf property and excepted the same from his first report heretofore filed in the office of the Clerk of the said Court, in which this cause is pending, on the said 26th day of Oct. 1903, for the purpose of obtaining, if possible, additional evidence bearing particularly upon the question as to whether or not the said wharf had been erected at or upon a public landing, under section 999 of the Code of
555 Virginia; it appearing from the defendant's exhibit "U" that the said B. L. Farinholt and others, on the 24th day of Sept. 1873, had petitioned the County Court of Middlesex County, (in which said County the said wharf property is situated) for the grant of the privilege of erecting a wharf at "Mason's Mill landing;" (now Bayport) and, insomuch as the said exhibit was not filed with the Special Master until the 27th day of Aug., 1903, (Deps. No. 2, p. 150) some time after the said B. L. Farinholt had been examined in chief, by Counsel for complainant company, in which examination he had stated that the said wharf had been erected in the year 1870, (Deps. No. 1, p. 7) the Special Master deemed advisable to further examine the said B. L. Farinholt, and to secure any other evidence obtainable that might explain an apparent inconsistency; accordingly, on the 27th day of Oct. 1903, the Special Master examined the records in the office of the Clerk of the County Court of Middlesex County, at Saluda, Va., and obtained copies of certain records, relating to this point, and not heretofore filed in evidence; said copies of said records being herewith returned with this report; and on the 10th day of Nov. 1903, the Special Master examined the said B. L. Farinholt, at his place of residence, in the town of West Point, Va., and the sworn statement of the said B. L. Farinholt is hereto appended.

From all the evidence submitted, and heretofore returned with the first report of the Special Master, and from the records of the said County Court examined in person by the Special Master, and from the said sworn statement of the said B. L. Farinholt, it appears that in Aug. 1870, a short time prior to the time when the said wharf was erected by the said B. L. Farinholt, the said County Court condemned a certain parcel of land on the said Rappahannock river shore, at a

point then known as "Mason's Mill Landing," for the purpose of establishing thereat a public landing; the area of the said parcel of land being one rood; and that the said landing was established and included a part of the said three acres of land acquired by the said B. L. Farinholt from the said T. C. Montague and others; (Pltf's Exhibit No. 1) and that it was ordered that the said B. L. Farinholt be paid the sum of $100.00 compensation for said land; (Deft's Exhibit "U" and copy of records herewith returned by Special Master).

It further appears that subsequently, in Sept. 1873, some years after the said Bayport wharf had been erected, the said County Court ordered that the said public landing be enlarged and extended so as to take in and include the river shore at and around the shore end of the said wharf, and that the said B. L. Farinholt be paid
556 the sum of $50.00, as compensation for said land so condemned; the area of said second condemnation being 23 poles, according to the report of the surveyor, R. T. Bland; a copy of which said report being herewith returned by the Special Master; and it was on account of this circumstance that the said B. L. Farinholt, uniting with others, made his said application for the privilege of erecting a wharf on said public landing, when, as a matter of fact, the said wharf had already been erected.

Under these circumstances, the Special Master is of opinion that it is unnecessary for him to determine and report what would be the effect upon the defendant's company's rights, as involved in this controversy, if the said wharf had been erected upon a public landing after said public landing had been duly established.

The Special Master, therefore, finds that by virtue of his acquisition of the said three acres of land on the river shore, the said B. L. Farinholt thereby became and was a riparian proprietor, "owning land upon a water course," and that as such owner he possessed the right to erect "a wharf on the same, or bulkhead in such water course opposite his land," etc., (sec. 998 of the Code of Va.) without petitioning the County Court for the privilege; and it further appears that the said B. L. Farinholt exercised his said right before a public landing had been established at the shore end of his said wharf;

The Special Master further finds that insomuch as the cost of erecting the said wharf was about $1600.00, it cannot reasonably be inferred that, when the said public landing was, subsequently, established at the shore end of the said wharf, and the sum of $50.00 paid to the said B. L. Farinholt, as compensation, that it was intended to vest in the public anything more than the land, and that the riparian rights, appurtenant thereto, were not included in said condemnation;

The Special Master therefore finds that, so far as this controversy is concerned, the effect of the extension of the said public landing would not differ from the condemnation of a public road leading to an established wharf,

And, therefore, in accordance with the conclusions of law heretofore set forth in the first report filed by the Special Master, on the said 26th day of Oct. 1903, the Special Master is of opinion that the

said wharf property should be included in the recommendation therein contained.

All of which is respectfully submitted, this 10th day of Nov. 1903.

E. M. LONG,
Special Master.

557 (The Special Master hereto appends a statement of actual expenses expended by him in this matter.)

Bayport Wharf.

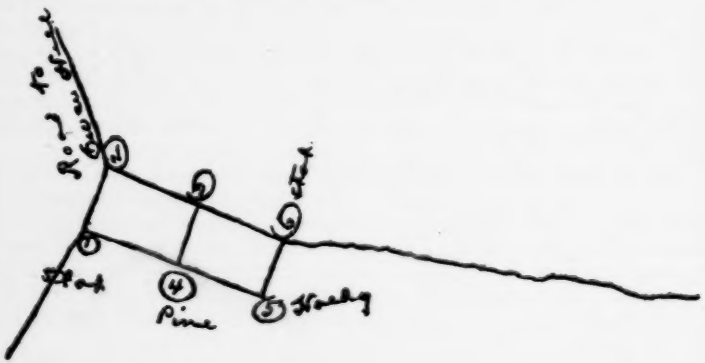
The following records, relating to the Bayport Wharf property, were copied by the Special Master, on the 27th day of Oct. 1903, from the records in the office of the clerk of the County Court of Middlesex County, at Saluda, Va.

"At a Court held for the County of Middlesex, at the Court House thereof, at Saluda, Va., on Wednesday, the 27th day of Aug. 1873.

"On the motion of B. L. Farinholt, it is ordered that R. T. Bland surveyor, (there being no County surveyor) do survey and lay off, by metes and bounds, the public landing at Mason's Hill landing, on the Rappahannock River, and make report to the Court."

Report of R. T. Bland, Surveyor.

"Pursuant to an order of the County Court of Middlesex, entered at the Aug. term, 1873, I proceeded on the 4th day of Sept. 1873, to lay off by metes and bounds the public landing at Mason's Mill landing, on the Rappahannock River.



"Commencing at figure (1) on the above plat, a stab on the East side of the public road, and running N. 9½′ E.—4 poles to (2), a stab on the river shore; thence down said shore 58½′ E. 10 poles to (3), a stab on shore; thence S. 9½′ W.—4 poles to (4), a small pine near the bank; thence N. 58½′ W.—10 poles to (1), the beginning —area, I rood.

558 "By the direction of one of the viewers, John A. Sadler, I ran the line to the shore from the figure (3) to (6), 8 poles, to a stab; thence S. 28½′ W.—3 poles and 14 links to (5), a Holly on edge of bank; thence along said bank to (4), the small pine—area, 23 poles."

Respectfully submitted,

R. T. BLAND, *Surveyor.*

"At a Court held for the County of Middlesex, at the Court House thereof at Saluda, on Wednesday, the 24th day of Sept. 1873.

"Robert T. Bland, gentleman, surveyor, who was ordered at last term to lay off by metes and bounds the public landing at Mason's Mill landing, made his report in writing, which report being considered, it appearing from the said report that more land is included in the landing than was contemplated by the viewers, B. L. Farinholt, the owner of the land being present, and the whole matter being agreed,

"It is ordered by the Court that the public landing be established, as per survey of said Bland, extending down to the ordinary low-water mark. And that the said B. L. Farinholt be paid the sum of fifty dollars, in addition to the one hundred heretofore paid him.

"Which is ordered to be certified to the board of supervisors for the County of Middlesex, for levy and payment. And the report of R. T. Bland is ordered to be recorded.

Truly recorded,

Teste: P. T. WOODWARD, *Clerk.*

Note by Special Master.

The records further show that, at the same term of Court, the said B. L. Farinholt and others petitioned for the privilege of erecting a wharf on the public landing, at Mason's Mill landing; a copy of which petition, and the order of the Court granting the same, being filed by the defendant, as its Exhibit "U."

559 VIRGINIA:

In the Circuit Court of the United States, Eastern District of Virginia. In Equity.

WEEMS STEAMBOAT CO., Complainant,
vs.
PEOPLE'S STEAMBOAT CO., Defendant.

In the Town of West Point, in the State of Virginia, the 10th Day of November, in the Year 1903.

Personally appeared before me, E. M. Long, Special Master in the above styled cause, on the day and year aforesaid and in the said Town of West Point, Va., B. L. Farinholt, who, after being by me duly sworn, made oath and saith as follows:

"I am the owner of the Monaskon and Bayport wharf properties, on the Rappahannock river, with reference to which I have heretofore testified, in this matter, in the city of Fredericksburg, Va., on the 4th day of Aug. 1903.

"And, as heretofore stated by me, in my said testimony, the Bayport wharf was built by me in the year 1870; I acquired the property, on the river shore, upon which the shore end of the said wharf abuts, consisting of three acres, by deed from T. C. Montague and others; said deed being dated the 14th day of July 1870, and it was in the fall of the same year that I had the said wharf built;

"Upon being shown, (by the Special Master) copies of certain orders, etc., entered by the County Court of Middlesex County, as follows: on the 25th Aug. 1870; 27th Aug. 1873; and on the 24th Sept. 1873, and a copy of the report of R. T. Bland, surveyor, who appears to have laid off, by metes and bounds, a public landing at Mason's Mill landing, (Bayport) I am of the opinion that the shore end of my said wharf at Bayport abuts on a part of the said public landing; that is to say: I am of the opinion, and it is my recollection, that the public landing established at this point by order of the said County Court, or by its order entered 25th Aug. 1870, did not extend down to, (so as to take in or include) any part of the shore where my said wharf was, subsequently, in the same year, erected; and that the public landing established by order of the said County Court, entered on the said 24th Sept., 1873, did include and take in that part of my land, on the river shore, upon which the shore end of my said wharf had, at that time, been erected; and I am confirmed
560 in this opinion by the statement, in the said order, that "it appearing from the said report (of the surveyor, R. T. Bland) that more land is included in the landing than was contemplated by the viewers, etc."

"And, upon examining the plat, filed with the report of the said R. T. Bland, surveyor (a copy whereof was shown to me by the Special Master), I am under the impression that the land included within the figures, on the said plat, (1) to (2), (2) to (3) to (4) and (4) to (1) constitutes the public landing, as originally established, under the said order of the said court, entered in 1870; and that the land included within the figures, on the said plat, (3) to (6), (6) to (5) and (5) to (4) constitutes all that part of the said public landing established by order of the said court in 1873, after my said wharf had been erected, and that my said wharf, at the shore end thereof, was and is abutting upon this, latter, part of the said public landing;

"And it was because of this fact that I petitioned the court for the privilege of erecting a wharf on the said public landing, though, as a matter of fact, the said wharf had been erected and was in use for some years before the said, latter, public landing was established;

"I will further state that said wharf cost, to erect the same, about $1,600.00; and that the annual average expense of keeping the same in repair is about $200.00; and that all repairs and expenses connected with said wharf are paid by me.

B. L. FARINHOLT.

Subscribed and sworn to before me, this 10th day of Nov. 1903, in the town of West Point, Va.

E. M. LONG,
Special Master.

561 *Statement of Expenses,*

(Incurred and Actually Expended by the Special Master, in this Matter.)

1903.			
July	10th.	R. R. fare to Fredericksburg and return.....	$3 25
	27th.	Two telegrams	50
Aug.	4th.	R. R. fare to Fredericksburg and return.....	3 25
	6th.	Hotel bill	4 50
	24th.	One telegram	29
	26th.	R. R. fare to Fredericksburg and return.....	3 70
		Hotel bill	4 50
Oct.	14th.	Two telegrams	54
	26th.	Stenographer (on report filed same day).....	15 00
	27th.	Trip to Saluda, Va. (Middlesex County),	
	28th.	via West Point; to Tappahannock, Va.,	
	&	via Urbanna, Va., to Richmond, via	
	29th.	Fredericksburg	15 00
Nov.	9th.	One telegram	33
	10th.	Trip to West Point, Va.....	3 50
		Stenographer (supplemental report, filed same day)	10 00
			$64 36

Respectfully submitted,

E. M. LONG,
Special Master.

562 *Exceptions of Defendant to Report and Supplemental Report of Special Master Ernest M. Long.*

Filed November 19th, 1903.

In Equity.

THE WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY
versus
THE PEOPLE'S STEAMBOAT COMPANY and Others.

(1) The defendant excepts to the said report and to the said supplemental report in regard to the finding of the special master that as a matter of law a wharf erected in navigable waters for the purposes of public commerce may be a private wharf, to the enjoyment of which one carrier may be admitted, and another excluded therefrom, at the whim of the proprietor.

(2) The defendant excepts to the finding of the special master that the wharves in controversy are private wharves because the proprietors pay taxes upon the said wharves, and derive revenue from the said wharves.

(3) Defendant excepts to the statement and finding of the special master that there is no evidence to show that "The county authorities have ever exercised any control over the said wharves, or that there has been any acceptance of the same," when as a matter of fact the evidence conclusively shows that Port Royal wharf is built abutting at its shore end upon a plat of ground dedicated as a public landing for a ferry, and the evidence shows the pier head to be in the navigable waters of the river, in front of the terminus of a public street. And in the case of the other wharves, because the evidence shows that the County Courts have established public landings upon the shore where the said wharves abut, or have established public roads, at the termini of which the wharves have been built, or both.

(4) The defendant excepts to the finding of the special master (p. 28) that the plaintiff has a right to exclude the defendant from any of the wharves in question; and especially in so far as the said finding applies to the eight wharves which are claimed by the plaintiff under leases, because it abundantly appears from the evi-
563 dence in the case (as to which evidence the report of the master is absolutely silent) that the defendant used the said leased wharves under authority of the same landlord to whom the plaintiff claims to attorn, and has paid the said landlord, in each such instance, the compensation demanded, both before and since the alleged dates of the alleged exclusive leases to the plaintiff.

(5) The defendant further excepts to the finding of the commissioner that there has been no abandonment of any of the said wharves to the public; because the said finding is misleading, and apparently is made under the idea that the public must be the responsible party for the maintenance and management of a wharf before the same will be "public" in character.

(6) The defendant excepts to the finding of the special master (p. 29 of Report) that roads leading to the wharves were opened thereto "subsequently to the erection of the said wharves, and that as to none of the roads is the evidence definite and conclusive that the road was established prior to the erection of the wharf." In regard to this finding of the special master, it is obvious that important testimony was overlooked or ignored. The testimony and the documentary evidence alike show the public highway in use to the location of the wharf at Port Royal, long prior to the erection of any wharf structure at that point.

The evidence, documentary and as testified to by witnesses, is conclusive that Leedstown was a public landing and place of shipment from very early days, and reached by a public highway, long prior to the erection of the wharf at that place. That long prior to the erection of a wharf structure at Tappahannock, the evidence shows that the shore where the wharf was afterwards erected was public domain, reached by a public highway, and has for genera-

tions been constantly and freely used by the public as a shipping place and place of barter and sale.

That as to Wellford's wharf, the evidence documentary and other, conclusively shows that the public road to the place where the wharf now abuts was established in the manner prescribed by law before the present wharf was built; and that the wharf was built by the grantor of the Weems Steamboat Company for the accommodation of the public and as a source of private revenue.

That as to Bowler's wharf, the evidence conclusively shows that the wharf is built upon and in front of a public landing regularly established, and the wharf was built by permission and order of the County Court as provided by statute.

That as to Sharp's wharf it is built upon and forms the
564 terminus of a public street or road, in a populous village or small town, and was built for purposes of public traffic, and is used, throughout the extent of the wharf structure, as a place of public barter and sale, and really forms a continuation of the street aforesaid.

That as to Bay Port, the evidence, contrary to the report of the special master, shows conclusively that the wharf was built subsequently to the establishment of a public landing at Bay Port, and the wharf abuts upon, and extends out from the said public landing.

And the finding of the special master as to the other wharves having been built prior to the establishment of roads as public highways to them is contrary to the weight of the evidence in the case.

E.

(7) Defendant excepts to the finding of the special master under his heading "E" because the question of the right of the defendant to go upon the land at the shore end of the wharves in question is not involved in this suit, and is not necessary to its decision, the evidence (Craddock Deps. #2, p. 139) showing conclusively that any trespass upon lands adjacent to the shore end of any wharf in question in this suit must have been committed, if at all, by persons coming to or going from the said wharves by land, and not by this defendant, whose steamer must be in the navigable water of the river.

F.

(8) The defendant excepts to the finding of law under the heading "F" of the special master, in that he confuses and confounds the taking of private property for public use, with a very different thing—the performance of a public duty voluntarily assumed. The taking of the wharf would invest the public with the right to collect and enjoy the tolls, and place upon the public the responsibility for maintenance, and could only be done by condemnation, whereas the evidence shows conclusively that in the case of every wharf involved in this controversy, the usual and customary wharfage has been paid, or at least tendered, by the defendant to the proprietor.

(9) The defendant excepts to the finding of the special master in regard to Bowler's wharf; (*a*) because on page 9 of his report he

"concludes" * * * "that the public landing established at the same point in the year 1882 must have been either above or below the said wharf" etc. when (Dep. No. 2, p. 10) a competent
565 and unimpeached witness, familiar with and at the time a resident of Bowler's, testifies that the wharf at Bowler's is practically a continuation of the public road, and abuts upon the shore within the established boundaries of the public landing.

(*b*) Because the report is misleading in its reference to the title conveyed to the wharf structure.

(*c*) Because the special master's report is silent on the fact, amply established even by the testimony of the plaintiff's witness R. G. Neale, (Dep. No. 1, p. 30) that the defendant has paid wharfage to the same proprietor the plaintiff claims to attorn to, both before and since the alleged execution of the alleged exclusive lease to the plaintiff. (See exhibits—receipts—with Defendant's answer.)

(10) The defendant excepts to the finding of facts by the special master because he utterly fails to report whether or not the alleged exclusive lease to the plaintiff was ever admitted to record, or any notice of any such lease being in existence brought home to the defendant. And for the further reason that the special master fails to state in his report the facts as to the payment by the defendant of wharfage to the same landlord to whom the plaintiff pretends to attorn, and the use of the wharf by the defendant for a satisfactory compensation, both before and since the alleged date of the alleged exclusive lease to the plaintiff.

(11) The defendant excepts to the report of the commissioner in so far as it undertakes to state any absolute fee simple and entire interest, free from the accompanying duties, in the owners or proprietors of the several wharves.

(12) The defendant excepts to the finding of facts as to each wharf except Monaskon because of the omission of the special master to report the receipt by the several proprietors of said wharves of wharfage paid to them by the defendant company.

(13) The defendant excepts to the findings of facts as to Ware's wharf by the special master, because,

(*a*) On page 7 of his report he refers to the testimony of R. L. Ware, (Dept. No. 1, p. 79) and contrary to the testimony of the witness makes him say that no wharfage has been paid or tendered by the defendant company for the use of his wharf. (Dept. No. 1, pp. 79-80-81.)

566 (*b*) The report of the special master fails to disclose the fact that the wharf is a place of public barter and sale, (Dep. No. 1, pp. 82) at least for fish.

(*c*) The report of the special master fails to state the fact that the proprietor, sworn as a witness for the plaintiff, states (p. 83-84 of Depositions #1) that he built the wharf for revenue, and "to benefit the neighborhood and myself, too."

(14) The defendant excepts to the supplemental report, as to the conclusions of law, for the same reasons assigned for excepting to the original report.

And further excepts to the supplemental report so far as the same is based upon the examination of record in the office of the clerk of the County Court of Essex, made without any opportunity being offered counsel for the defendant to be present at, aid in, or question such examination. The further testimony of B. L. Farinholt taken without opportunity to the defendants to cross examine the witness is excepted to for the same reason, and because his testimony is not competent to contradict the records of the courts of Middlesex County.

(15) The defendant especially excepts to the findings or conclusions of the special master as to a subsequent sale of the strip of shore originally reserved from private ownership in laying out the town of Tappahannock; because (*a*) The act to which he refers is not established as ever enacted in the form, and to the effect, ascribed to it by his report.

(*b*) If enacted in due form, it could not authorize or effectuate a transfer of property held in trust by the Government for the public.

(*c*) The report fails to show the fact that the entire holding or riparian claim of the plaintiff at Tappahannock is "shore", and that no part of said holding extends above high water mark.

WM. D. CARTER,
ALVIN T. EMBREY,
Counsel for Defendant.

567 *Opinion of the Court.*

Filed October 17th, 1905.

In Equity.

THE WEEMS STEAMBOAT CO. OF BALTIMORE, MD.,
vs.
THE PEOPLE'S STEAMBOAT CO. and Others.

On Application for an Injunction to Restrain the Use of Certain Alleged Private Wharves.

Statement of the Case.

The complainant company, a corporation of the State of Maryland, the owner and operator of a line of steamers plying between the City of Baltimore, in the State of Maryland, and the city of Fredericksburg, in the State of Virginia, said route being from Baltimore down Chesapeake Bay to the mouth of the Rappahannock river, and thence up said river to Fredericksburg, filed its bill in this cause to enjoin the People's Steamboat Company, a corporation of the State of Virginia, the owner and operator of a competing steamer to that of complainant, from allowing its steamer, the "Tourist," to use certain wharves, thirteen in number, on the Rappahannock river, owned or leased by the complainant company; because, as alleged, said wharves

were not public wharves, but the private property of the complainants. Upon presentation of the bill, a rule was awarded requiring the defendant to show cause why the injunction prayed for should not issue; and upon its return; affidavits in favor of and against the motion were filed; and the court thereupon, before granting the injunction, directed a reference to a special master, with a view of ascertaining the status of the said wharves. A great mass of evidence was taken, and an investigation of the titles to the property made by the special master; and in an elaborate and able report, he concluded that all of the said wharves were either owned in fee by the complainant company, or held by it under proper leases from the lawful owners thereof; and that said wharves, one and all, were the private property of said owners; and private, as distinguished from public wharves. Exceptions were filed to this report by the defendant company, and fully argued before the court; and the question for determination is whether said wharves are in point of fact, public or private wharves. If public, the defendant has the right to the use of them as contended; whereas, if private, such right does not exist.

568 The Rappahannock river is one of the ancient and important waterways of the Commonwealth. The distance from its point of navigability at the city of Fredericksburg, to where it empties into Chesapeake Bay, is about one hundred and twenty miles; and considerable commerce is conducted upon it; and the complainants and their predecessors have for a long number of years, forty or fifty, operated a line of steamers from the City of Baltimore, over said route; and on said river are located some of the oldest villages and towns in the State; notably at two of the wharves in question, Tappahannock and Port Royal—the latter place being one of the oldest, as it was at one time one of the largest ports of entry, in the Commonwealth; although now it has only some few hundred inhabitants. The complainants are the owners of six of the wharves under consideration, having acquired the same from time to time during the operation of their line of steamers; and they succeeded in leasing the remaining seven of said wharves, shortly before the institution of this proceeding, and after the defendant company inaugurated its line of steamers on said river. While the said thirteen wharves involved in this proceeding by no means include all the wharves or stopping places for vessels on the river, it may be said that they embrace the important wharves from which the passenger and freight business is chiefly procured, in passing up and down the river; and that the business from said wharves is large. With possibly a single exception these wharves are at the termini of public highways in the counties in which they are respectively built; the character of the business consists of passenger travel, and merchandise received over said wharves, consisting of the general products of the country; and they are the usual shipping places of persons living in the immediate neighborhood of the wharves, and of the inhabitants of the country for some distance in the interior. That at said wharves, United States post offices are established, at which the mail of the people for the surrounding country is procured; and that as to the wharves leased as aforesaid, the same were leased upon a rental of a commis-

sion of ten per cent. of all freight charges and passenger fares collected by the complainant at said wharves; the owner of said wharves maintaining an agent there to assist in mooring the vessels of the complainants making landings there; and in receiving and forwarding freight therefrom; and at some of the wharves sail vessels from time to time moor, and lade and unlade, making proper compensation to the owners of the wharves for their use.

569 H. St. George Fitzhugh & George W. Williams, for complainants; and William D. Carter and A. T. Embrey, for respondents.

WADDILL, *District Judge:*

(After stating the facts as above:)

While the special master is doubtless correct in his findings as to the actual ownership of the property rights in said wharves, namely, that they are the individual property of the several owners thereof, and as such pass regularly by the laws of descent and purchase, it by no means follows that said wharves are private *quoad* the public; that is, either the citizens desiring to use the wharves to reach the means of transportation upon and over said river, or owners of such methods of transportation plying the waters of said river; the obligation upon each being to render and pay to such wharf owner reasonable wharfage and charges for the use of his property, under such proper and reasonable regulations as might be imposed either by law, or by the owner of the property.

Wharves belong to a class of property in which the public is concerned, and as to which the government has always reserved the right, as between its citizens, to regulate and control. This has prevailed in England from time immemorial; and in this country from its earliest colonization; that is to say, the government has exercised the authority to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, &c. And hence this class of property, when used by the public, becomes affected with a public interest, and it ceases to be *juris privati* only. As was said by Mr. Chief Justice Waite, in delivering the opinion of the court and discussing the subject under consideration, in Munn *v.* Illinois, 94 U. S., 126, "This was said by Lord Chief Justice Hale more than 200 years ago, in his treatise De Portibus Maris, 1 Harg. Law Tracts, 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore one devotes his property to a use in which the public has an interest, he in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."

The question of what is technically a public, and what a private wharf, may be a matter of some doubt; but there should be no serious question in this case, as to the wharves under consideration.

570 The Supreme Court of the United States in Dutton and others *v.* Strong and others, 66 U. S., 1, 32, had under consideration

this precise question, as to when piers, landing places and wharves were private, or became public wharves; although the property in such wharves remained in the individual owner; and in apt language said: "and whether they are the one or the other may depend, in case of dispute, upon several considerations; involving the purpose for which they were built; the uses to which they have been applied; the place where located; and the nature and character of the structure."

These wharves, it must be borne in mind, are not the landing places or piers of a line of steamers in a city; but mere wharves along the banks of a river in the country; in the main at the termini of public county roads; and hence the means, and only means, whereby the people of the community can reach the river, and use the mediums of commerce navigating the same. These wharves were all built that they might be so used, and for the profit that was in the use; and they have been continually thus used; some of them yielding to the owners, because of the travel upon and over them by the public, with the complainant and others, a large return; and so long as they are thus used, as between the public and their owners, they are public, as distinguished from private wharves.

Nor does the fact that the complainant does not charge wharfage *eo nomini* in its transactions with its patrons, change the character of the wharves; since they built, used and maintained them for the public generally, who used their wharves and their steamers, paying their passage and freight money, which includes wharfage; and they cannot thereby, whether actual wharfage is charged or not, either discriminate as between the public seeking to go upon and over the wharf, or public carriers seeking to lawfully ply the waters of said river. The complainant is a public carrier, using a public waterway; and it cannot by the mere fact of not charging wharfage at a wharf, used generally by the public, secure a right to prevent any part of the public from using the wharf upon equal terms with others. And least of all can they cut off a competitor lawfully engaged in the navigation of such waterway, from the free use thereof, and the right to have and receive the patronage of the public lawfully using such wharf, upon making or proffering proper compensation therefor. It will be readily seen that if the complainant could exercise such a privilege as this, it would be a simple thing for the owners of a line of steamers, to acquire all the wharves on the river, and thereby subject the public to a monopoly from which there would be no escape; and deny to them the free use of the public waters of the Commonwealth. If such a thing were possible, the continued
571 improvement of rivers and harbors by the general government would quickly cease; and the commerce of the country receive a serious set back.

The question of private ownership of wharves is fully recognized in the case of Dutton *et als. v.* Strong *et als. supra,* p. 33, by the Supreme Court of the United States, in this language:

"Undoubtedly, a riparian proprietor may construct any one of these improvements *for his own exclusive use and benefit;* and, if not located in a harbor, or other usual resting place for vessels, and if confined within the shore of the sea or the unnavigable waters of

a lake, *and it had not been used by others, or held out and intended for such use,* no implication would arise, in a case like the present, that the owner had consented to the mooring of the vessel to the bridge pier;" (Court's italics) that is to say, riparian owners can construct and maintain for their own exclusive use and benefit, private wharves upon their property; and as long as they so use them, they are not affected with a public interest; and a temporary use by another, by special arrangement with the owner, might not affect the character of such wharf; (Transportation Co. *v.* Parkersburg, 107 U. S., 691, 699.) But a general or habitual use thereof by persons other than the owner, will relieve the property of its private character. No hardship would befall the owner of the private property by this interpretation, in that it could or might be claimed that it was a deprivation thereof, and the appropriation of the same to public use, without proper compensation. This phase of the question was considered by the Supreme Court of the United States in the case of Munn *v.* Illinois, 94 U. S., *supra*, 125, and the suggestion refuted; and in this same case, the court, at page 126, speaking of the owner, said: "He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control." The owners of wharves have a complete remedy within their own hands, if, in point of fact, they be private, as distinguished from public wharves. They have the right to withdraw the use of their wharves entirely from the public. But they cannot allow the latter to use the wharves, or use them themselves in their business as public carriers for the public, and discriminate between them in their use.

In what has been said, no opinion is meant to be expressed upon any question affecting the ownership of wharves and piers in cities and towns of the Commonwealth, or harbors or places where there may be more than one landing place; as entirely different considerations may determine a controversy arising over such property,
572 and under such circumstances. The fact of the existence of a different rule as to wharves like the ones in question, along the banks of a river in the country, where they may be said to be the only means of communication by the public with the waterway, from those in the harbors of cities or towns, where there are not unfrequently many and other wharves and landing places for the landing and embarking of passengers and freight, has long since been recognized; and much can be said as to the necessity for, and the wisdom of such distinction. The location of wharves in the country, the meandering of the river, the character of the river banks, the condition of marshes along the river courses; the fact that the forests and country along the river and adjacent to such wharves for long distances might not be opened up, would one and all tend to show the reason for the existence of a different rule. This fact was recognized by Sir Mathew Hale long ago; and the Supreme Court of the United States, speaking through Mr. Justice Bradley, referring to that learned jurist, in Transportation Co. *v.* Parkersburg, 107 U. S., 699, *supra*, said: "Whether a private wharf may be maintained as such, where it is the only facility of the kind in

a particular port or harbor, may be questioned." And in treating of this subject, Lord Hale, in his treatise De Jure Maris, Hargreaves Law Tracts, 77, says:

"A man, for his own private advantage, may, in a *port or town* set up a wharf or crane, and may take what rates he and his customers can agree for cranage, wharfage, housellage, pesage; for he doth no more than is lawful for any man to do, viz.: makes the most of his own. * * * If the king *or subject* have a *public wharf*, unto which *all persons that come to that port must come and unlade and lade their goods* as for the purpose, because they are the wharfs only licensed by the king, or *because there is no other wharf in that port*, as it may fall out where a port is newly erected; in that case *there cannot* be taken arbitrary and excessive duties for cranage, wharfage, pesage, etc., neither can they be enhanced to an immoderate rate; but the duties must be reasonable and moderate, though settled by the king's license or charter. For now the *wharf and crane and other conveniences are affected with a public interest*, and they cease to be *juris privati* only; as if a man set out a street in new building on his own land, it is now no longer bare private interest, but is affected by a public interest."

This quotation from Lord Hale has been referred to approvingly by the Supreme Court of the United States at least twice; in the case of Munn *v.* Illinois, 94 U. S., *supra*, and Transportation
573 Co. *v.* Parkersburg, 107 U. S. 699, *supra*. Reference may also be had to Gould on Waters, 3rd Ed. sec. 119; Barington *v.* Commercial Dock Co. (Washington State Supreme Court), 33 L. R. A., 116, and cases there cited; Oregon Short Line *v.* Ilwaco Ry. & Nav. Co., 51 F. 611; Indian River Co. *v.* E. C. Transportation Co., 10 S. E. Rep., 485; Sherlock *v.* Bainbridge, 41 Ind., 35, 13 Am. Rep., 302.

The array of authorities cited by the complainant in support of its several contentions, and which largely treat of the rights of riparian owners to the status of wharf property in cities and towns, and ports where there are more than one wharf, and the title to private property in wharves, have been carefully considered by the court; and while some of the cases apparently conflict with the views herein expressed, the court feels controlled by the authorities relied upon as the basis of this decision.

The conclusion of the court is that the injunction asked for should be refused, at the cost of the complainant.

Decree Fixing Special Master's Compensation.

Entered and Filed November 24th, 1905.

In Equity.

WEEMS STEAMBOAT COMPANY
vs.
PEOPLE'S STEAMBOAT COMPANY ET ALS.

The court doth fix the sum of six hundred and fifty ($650.00) dollars as reasonable compensation to special master Ernest M. Long, for his services rendered in this cause, including his expenses; and it is accordingly adjudged, ordered and decreed that the complainants pay the said Ernest M. Long, the said amount, in full of his compensation for services rendered by him in this cause, including his expenses incident thereto.

EDMUND WADDILL, JR.,
United States Judge.

Richmond, Va., November 24th, 1905.

574 *Order Refusing Injunction and Dismissing Bill.*

Entered and Filed December 23, 1905.

In the United States Circuit Court for the Eastern District of Virginia. In Equity.

THE WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, a Body Corporate,
versus
PEOPLE'S STEAMBOAT COMPANY, a Body Corporate; WILLIAM D. CARTER, President; A. W. EMBREY, Vice-President; A. RANDOLPH HOWARD, Treasurer; and WILLIAM D. CARTER, A. W. EMBREY, A. RANDOLPH HOWARD, and F. V. ARCHER.

The court having maturely considered the application for a permanent injunction made, argued and submitted on the 3rd and 4th days of December, 1903, for reasons filed in writing on the 17th day of October, 1905, and hereby made a part of the record in this cause, doth, on this 23rd day of December, 1905, refuse to grant the said injunction. And thereupon this cause came on this said 23rd day of December, 1905, on motion of the complainant, with the assent of the defendants, to be finally heard upon the pleadings, proofs, reports and exceptions thereto in this cause, to-wit: the complainant's bill and exhibits therewith filed; defendants answers and exhibits therewith filed; two reports of Special Master Ernest M. Long, and exhibits and depositions returned therewith, the exceptions thereto, and upon the admission of fact made in open court by counsel for

both parties that the steamboat of the defendant, the People's Steamboat Co. ceased to ply the Rappahannock river in December, 1903, and has not since plied the waters of said river, nor touched nor landed at any of the wharves mentioned in complainants bill, it is ordered that said bill be, and the same is hereby dismissed at the cost of the complainant.

EDMUND WADDILL, JR.,
U. S. Judge.

Richmond, Va., December 23rd, 1905.

575 *Petition for Appeal and Assignment of Errors.*

Filed December 27th, 1905.

In the Circuit Court of the United States for the Eastern District of Virgina. In Equity.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, a Body Corporate,
versus
PEOPLE'S STEAMBOAT COMPANY, a Body Corporate; WILLIAM D. CARTER, President; A. W. EMBREY, Vice-President; A. RANDOLPH HOWARD, Treasurer; and WILLIAM D. CARTER, A. W. EMBREY, A. RANDOLPH HOWARD, and F. V. ARCHER.

To the Honorable the Judges of the said Court:

The Weems Steamboat Company of Baltimore City, the complainant in the above entitled cause, being aggrieved by the findings, rulings and decree of the Circuit Court of the United States for the Eastern District of Virginia in this case and matter, by this, its petition, prays that it may be allowed to appeal to the United States Circuit Court of Appeals for the Fourth Circuit from the decree which was passed herein on the 23rd day of December, 1905, and filed on the 23rd day of December, 1905; that a proper citation may be issued and served upon the respective defendants in this cause; that a transcript of the record, proceedings and papers in the above entitled cause may be transmitted to the said United States Circuit Court of Appeals; that the said decree may be reversed and that a decree may be entered in favor of your petitioner in accordance with the prayer of its bill, which was filed herein on the 16th day of April, 1903.

And your petitioner further prays this Honorable Court to prescribe the amount of the appeal bond to be given.

And your petitioner files herewith the following

Assignment of Errors.

1. That the court erred in decreeing against this petitioner, the complainant in this cause, and in dismissing, with costs, its bill of complaint, which was filed herein on the 16th day of April, 1903.

576 2. That the court erred in sustaining the exceptions filed by the defendants to the reports of the special master in the above entitled case, which reports were filed on the 26th day of October, 1903, and on the 10th day of November, 1903.

3. That the court erred in refusing to grant the injunction prayed for in the bill of complaint filed by the complainant.

4. That the court erred in holding that, with possibly a single exception, the wharves in question are at the termini of the public highways in the counties in which they are respectively built.

5. That the court erred in holding that the wharves in question are the usual shipping places of persons living in the immediate neighborhood of the wharves and the inhabitants of the country for some distance in the interior.

6. That the court erred in deciding that the wharves in controversy and mentioned in the bill of complaint, are public and not private wharves.

7. That the court erred in holding that the wharves in question are the only means whereby the people of the community can reach the Rappahannock river and use the mediums of commerce navigating the same.

8. That the court erred in holding that the wharves were all built that they might be used as the means, and only means, whereby the people of the community can reach the Rappahannock river and use the mediums of commerce navigating the same.

9. That the court erred in holding that the wharves in question are public wharves as distinguished from private wharves.

10. That the court erred in holding that the wharves were built, used and maintained for the public generally.

11. That the court erred in holding that the complainant could not discriminate as between the public seeking to go upon and over the wharves in question, or public carriers seeking to lawfully ply the waters of the Rappahannock river.

12. That the court erred in holding that the complainant could not secure a right to prevent any part of the public from using the wharves upon equal terms with the others, and that the complainant could not cut off a competitor lawfully engaged in navigation of the river, from free use of the wharves and the right to have
577 and receive the patronage of the public lawfully using such wharves, upon making or proffering proper compensation therefor.

13. That the court erred in holding that the owners of wharves cannot allow the public to use the wharves or use them themselves in their business as public carriers for the public, and discriminate between them in their use.

ST. GEORGE R. FITZHUGH,
GEORGE WEEMS WILLIAMS,
Solicitors for Complainant.

Order Allowing Appeal and Fixing Amount of Bond.

Entered and Filed December 27th, 1905.

In Equity.

THE WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY
versus
PEOPLE'S STEAMBOAT COMPANY and Others.

Appeal allowed as prayed for, though I have grave doubt as to whether the same should be granted, because of the discontinuance of the operation of the steamer, sought to be enjoined; but have concluded to leave that question to the determination of the Appellate Court. Appeal bond fixed in the penalty of five hundred dollars.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., December 27th, 1905.

Appeal Bond.

Know all men by these presents, that we, Weems Steamboat Company of Baltimore City, as principal, and American Bonding Company of Baltimore, a corporation, as surety, are held and firmly bound unto People's Steamboat Company, a body corporate, William D. Carter, President, A. W. Embrey, Vice-President, and A. Randolph Howard, Treasurer and William D. Carter, A. W. Embrey, A. Randolph Howard and F. V. Archer, in the full and just sum of five hundred dollars ($500), to be paid to the said obligees or their certain attorneys, executors, administrators, successors, or assigns, to which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

578 Sealed with our seals and dated this 30th day of December, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a Circuit Court of the United States in and for the Eastern District of Virginia, in a suit depending therein between the Weems Steamboat Company of Baltimore City, a body corporate, complainant, and the People's Steamboat Company, and the other obligees above mentioned, respondents, a decree was rendered against the said complainant, and the said complainant having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said People's Steamboat Company and the other respondents above mentioned, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Fourth Circuit, to be holden at Richmond on the day in said citation mentioned.

Now, the condition of the above obligation is such that if the said Weems Steamboat Company of Baltimore City shall prosecute its

appeal to effect, and answer all damages and all costs, if it fails to make its appeal good, then the above obligation to be void; else to remain in full force and virtue.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY,
By WILLIAM THOMPSON, *President.*

[Seal of Weems Steamboat Company.]

Attest:
W. L. *ROTHSHUN, (?) Secretary.*

AMERICAN BONDING COMPANY OF BALTIMORE,
By H. H. STRYKER,
Assistant to President.

[Seal of American Bonding Company.]

Attest:
C. R. LAURENSON,
Ass't Secretary.

The foregoing bond is hereby approved.
EDMUND WADDILL, JR.,
United States Judge.

579 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to People's Steamboat Company, William D. Carter, President; A. W. Embrey, Vice-President; A. Randolph Howard, Treasurer; William D. Carter, —— Craddock, and F. V. Archer, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fourth Circuit, to be holden at Richmond on the twentieth day of February next, pursuant to an appeal from a decree of the Circuit Court of the United States for the Eastern District of Virginia, in your favor passed in a cause in said court wherein the Weems Steamboat Company of Baltimore City is appellant, and you are appellees to show cause, if any there be, why the decree rendered against the said Weems Steamboat Company in said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, this 25th day of January, in the year of our Lord, one thousand nine hundred and six.

EDMUND WADDILL, JR.,
U. S. Judge.

FREDERICKSBURG, VA., *Feb'y 9th,* 1906.

I hereby acknowledge legal service of the within citation.
WM. D. CARTER,
Counsel for Defendants.

580 *Order Transmitting Record.*

And, thereupon, it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the United States Circuit Court of Appeals for the Fourth Circuit, and the same is transmitted accordingly.

[Seal of Court.]

Teste: JOSEPH P. BRADY, *Clerk.*

Certificate of Clerk.

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, in the Fourth Judicial Circuit, do certify that the foregoing is a full and true transcript of the record and proceedings of said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said Circuit Court, at the City of Richmond, this 15th day of February, A. D., 1906.

[Seal of Court.]

JOSEPH P. BRADY,
Clerk United States Circuit Court
for the Eastern District of Virginia.

581 & 582 *Proceedings in the United States Circuit Court of Appeals for the Fourth Circuit.*

No. 662.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, Appellant,
vs.
PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, President, *et al.*, Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia, at Richmond.

Feb. 19, 1906, transcript of record is filed, and cause docketed.

Same day, appearance of George W. Williams and St. George R. Fitzhugh for the appellant, order filed.

April 18, 1906, twenty copies of the printed record is filed.

May 7, 1906, (May Term, 1906,) cause continued on motion of appellant in open court.

Oct. 30, 1906, appearance of William D. Carter for the appellees, order filed.

Nov. 8, 1906, (No. Term, 1906,) the cause came on to be heard and is argued by counsel before Circuit Judges Goff and Pritchard and District Judge McDowell, and submitted.

May 7, 1907, (May Term, 1907,) the court announced and filed its *per curiam* opinion, which is as follows, to-wit:

583 & 584 *Opinion.*

Filed May 7, 1907.

United States Circuit Court of Appeals, Fourth Circuit.

No. 662.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, Appellant,
versus
PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, President, *et al.*, Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia, at Richmond.

[Argued Nov. 8, 1906, Decided May 7, 1907.]

Before Goff and Pritchard, Circuit Judges, and McDowell, District Judge.

St. George R. Fitzhugh and George W. Williams, for the appellant, and William D. Carter, for the appellees.

Per Curiam:

A careful examination of the record impels us to an affirmance of the decree appealed from. The opinion of the court below, reported in 141 Fed., 454, has our approval.

585 May 11, 1907, (same term,) the court made and entered the following decree, to-wit:

Decree.

Filed May 11, 1907.

United States Circuit Court of Appeals, Fourth Circuit.

No. 662.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, Appellant,
vs.
PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, President, *et al.*, Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Virginia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said Circuit Court, in this cause be, and the same is hereby, affirmed, with costs.

NATHAN GOFF.

May 11th, 1907.

586 *Petition of Appellants for Stay of Proceedings and Order of Court Thereon.*

Filed May 29, 1907.

Petition.

In the United States Circuit Court of Appeals, Fourth Circuit.

No. 662.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, Appellant,
vs.
PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, President, *et al.*, Appellees.

To the Honorable the Justices of the United States Circuit Court of Appeals:

Your petitioner, the Weems Steamboat Company of Baltimore City, appellant, in the above-entitled cause, respectfully represents unto your Honors:

That it is about to apply to the Supreme Court of the United States for a *writ of certiorari* in order that the proceedings in the

above-entitled cause may be reviewed by the Supreme Court of the United States and any error therein duly corrected.

That, accordingly, it prays that an order be passed by this Honorable Court staying all further proceedings in this Honorable Court and in the Circuit Court of the United States for the Eastern District of Virginia until the Supreme Court of the United States finally disposes of the application for *writ of certiorari* to be filed as hereinbefore mentioned.

And as in duty, etc.

ST. GEORGE R. FITZHUGH,
GEORGE WEEMS WILLIAMS,
Attorneys for Weems Steamboat Company of Baltimore City.

587 *Order.*

Upon the foregoing petition, it is ordered this 29th day of May, 1907, by the United States Circuit Court of Appeals for the Fourth Circuit that all further proceedings in the above-entitled case be stayed until the Supreme Court of the United States has disposed of the application for a *writ of certiorari* to be filed as set forth in said petition, or until further order of this court in the premises.

NATHAN GOFF,
Judge Presiding.

Clerk's Certificate.

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In testimony whereof I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, this 31 day of July, A. D., 1907.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, Fourth Circuit.

588 United States Circuit Court of Appeals, Fourth Circuit.

UNITED STATES OF AMERICA:

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do make return of the annexed writ of certiorari issued out of the Supreme Court of the United States in the cause therein entitled on the 24th day of October 1907, by

annexing hereto a certified copy of the stipulation of the attorneys of record, that the certified copy of the record now on file in the Supreme Court of the United States may be taken as a return to the writ of certiorari.

In testimony whereof I hereto set my hand and affix the seal of the said Circuit Court of Appeals on this 6th day of November, A. D., 1907.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th Circuit.

589 UNITED STATES OF AMERICA:

In the Circuit Court of Appeals, Fourth Circuit.

No. 662.

WEEMS STEAMBOAT CO. OF BALTIMORE CITY, Appellant,
vs.
PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, President, *et al.*, Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia, at Richmond.

It appearing that the Supreme Court of the United States has issued a writ of certiorari upon application of the Weems Steamboat Co. of Baltimore City in the above entitled cause and has directed that the record and proceedings in said cause be certified and removed into the Supreme Court;

It is now agreed by the attorneys of the above entitled parties that the certified copy of the record now on file in the Supreme Court of the United States may be taken as a return to the writ of certiorari.

This the 30th day of October, 1907.

WM. D. CARTER,
Counsel for People's Steamboat Company et al., Respondents.
ST. GEO. R. FITZHUGH,
GEORGE WEEMS WILLIAMS,
Counsel for Weems Steamboat Co., of Baltimore City, Petitioner.

590 UNITED STATES OF AMERICA:

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing stipulation of counsel is a true copy of the original filed Oct. 30, 1907, and now remaining among the records and proceedings in the therein entitled cause.

In testimony whereof I hereto set my hand and affix the seal of

the said Circuit Court of Appeals, at Richmond, on this 6th day of November, A. D., 1907.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th Circuit.

591 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fourth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Weems Steamboat Company of Baltimore City is appellant and People's Steamboat Company, William D. Carter, President, *et al.*, are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Eastern District of Virginia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United
592 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 24th day of October, in the year of our Lord one thousand nine hundred and seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

593 [Endorsed:] File No. 20,858. Supreme Court of the United States. No. 455, October Term, 1907. Weems Steamboat Co., of Baltimore City, *vs.* People's Steamboat Co., *et al.* Writ of Certiorari. The return to the within Writ of Certiorari appears from the schedules hereunto annexed. Henry T. Meloney, Clk. U. S. Cir. Court of Appeals, Fourth Circuit.

594 [Endorsed:] File No. 20,858. Supreme Court U. S. October Term, 1908. Term No. 181. Weems Steamboat Co., of Baltimore City, *vs.* People's Steamboat Co., *et al.* Writ of Certiorari and return. Filed Nov. 8th, 1907.

Office Supreme Court, U.
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JAMES H. McKENNEY
Clerk

No. 181

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1907.

No.

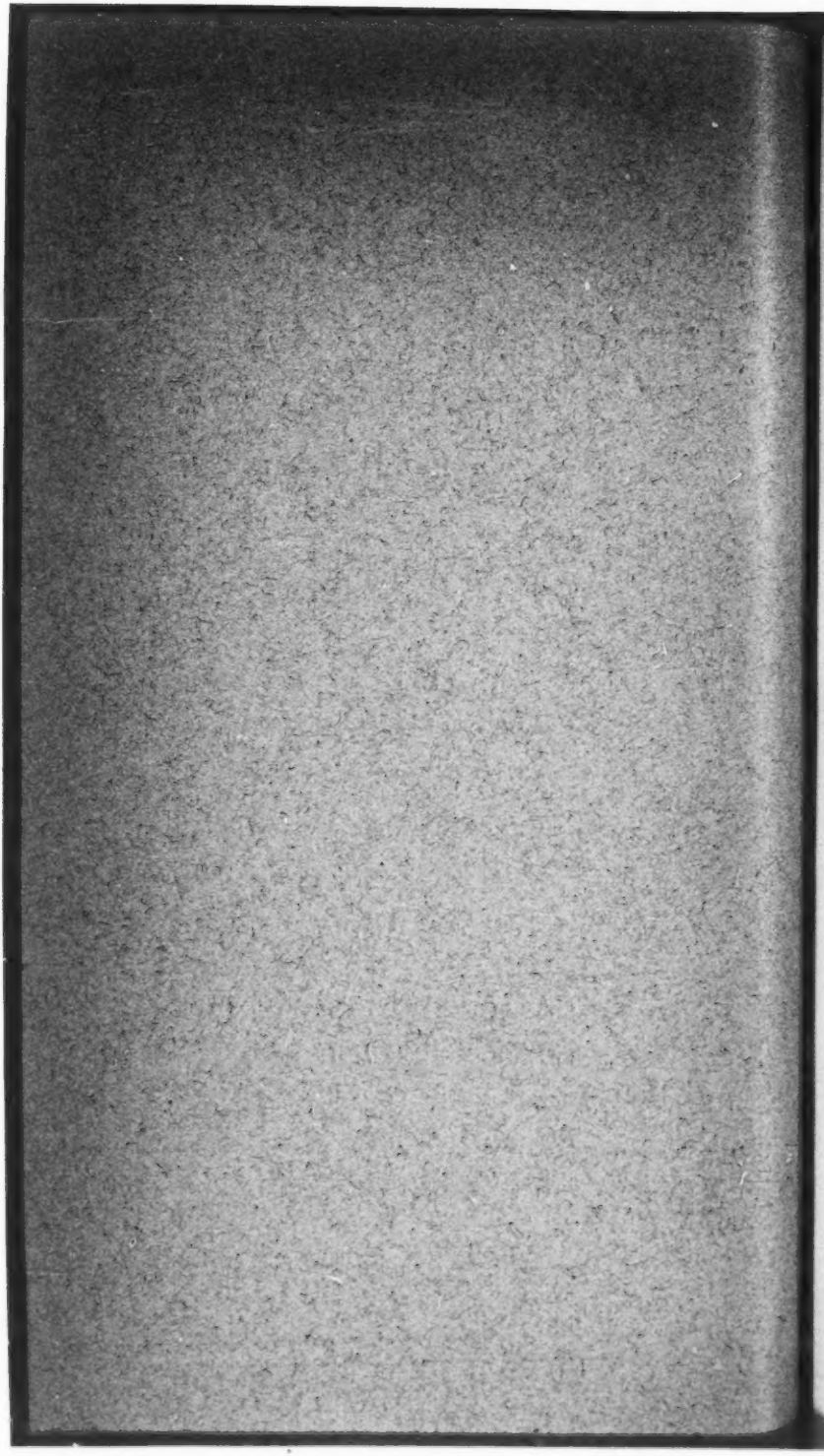
WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, a Body Corporate, *Petitioner*,

vs.

PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, President; A. W. EMBREY, Vice-President; A. RANDOLPH HOWARD, Treasurer; WILLIAM D. CARTER, CRADDOCK F. V. ARCHER, *Respondents.*

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

King Bros., *Printers*, 413 E. Lexington Street, Baltimore, Md.



IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1907.

No.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, a Body Corporate, *Petitioner*,

vs.

PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, President; A. W. EMBREY, Vice-President; A. RANDOLPH HOWARD, Treasurer; WILLIAM D. CARTER, CRADDOCK, F. V. ARCHER, *Respondents.*

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Your petitioner, the Weems Steamboat Company of Baltimore City, a corporation organized and existing under the laws of the State of Maryland, respectfully represents unto your Honors:

First. That the decree of the United States Circuit Court for the Eastern District of Virginia, affirmed by the United States Circuit Court of Appeals for the Fourth Circuit, and sought to be reviewed herein, rests, as will clearly appear from the reading of the opinion of the Circuit Court, which opinion was approved and adopted by the Circuit Court of Appeals (See Appendix A), upon the proposition that a common carrier of freight and passengers owning or controlling wharves built out from the banks of a navigable river and used by it in the conduct of its business as a common carrier, cannot exclude from the use of such wharves the vessels of a competing company,

provided such wharves are not located in cities, towns, harbors or places where there is more than one landing place. The opinion also decided that the fact that the Company owning or controlling such wharves allows the public to use them in order to travel on its boats, or to ship or receive freight thereon, makes such wharves public in the sense that any vessel can use the same in competition with the vessels of the owner, against its protest and notwithstanding its prohibition.

Second. That on the 16th day of April, 1903, your petitioner filed a bill of complaint in equity against the above-mentioned respondents in the Circuit Court of the United States for the Eastern District of Virginia, sitting in the City of Richmond, in the State of Virginia, and in said bill of complaint made allegations and averments substantially as follows :

That it was a citizen and resident of the State of Maryland, and that the respondent corporation was a corporation created and existing under the laws of the State of Virginia, with its principal place of business in the City of Fredericksburg, and that said respondent corporation and the other respondents above mentioned, were each and all citizens and residents of the State of Virginia and of the Eastern District of Virginia at the time of the commission of the wrongs in said bill of complaint set forth, and at the time of the filing thereof.

That your petitioner and its predecessors had been for many years operating a line of steamboats between the City of Baltimore, in the State of Maryland, and the City of Fredericksburg and intermediate points on the Rappahannock river, in the State of Virginia, as a carrier of passengers and freight, and had used the wharves hereinafter mentioned in its said business.

That it was the fee simple owner of the five following wharves on the said Rappahannock river, in the said State of Virginia, namely :

Port Royal Wharf, in the County of Caroline.

Leedstown Wharf, in the County of Westmoreland.

Tappahannock Wharf, in the County of Essex.

Wellford's Wharf and Sharp's Wharf, in the County of Richmond.

That the several parcels of land on the banks of the Rappahannock River were acquired by your petitioner and its predecessors in the ownership of its line of steamboats for the purpose of erecting thereon and extending therefrom said wharves for the exclusive use of its and their steamboats and of those patronizing said steamboats, and that they had been in exclusive possession of the same for many years; that said wharves had cost in the neighborhood of fifty thousand dollars ($50,000) to build and between five and ten thousand dollars ($5,000 and $10,000) annually to keep in repairs.

That your petitioner was, for valuable consideration, the lessee from the owners thereof, of the following wharves and land upon which the same were erected on the said river, in the said State of Virginia, namely:

Carter's Wharf, Naylor's Hole Wharf, and Whealton's Wharf, in the County of Richmond.

Ware's Wharf and Bowler's Wharf, in the County of Essex.

Bay Port Wharf and Water View Wharf, in the County of Middlesex.

Monaskon Wharf, in the County of Lancaster.

That said leased wharves had been leased and used by it and its predecessors exclusively for many years.

That the following statute is found in the Code of Virginia and had been the law in Virginia since at least 1839-1840, to wit:

> "Any person owning land upon a water course may erect a wharf upon the same or pier or bulkhead in such water course opposite his land, provided the navigation be not obstructed nor the private rights of any person be otherwise injured thereby. But the Court of the County in which such wharf, pier or bulkhead is, after causing ten days' notice to be given to the owner thereof of its intention to consider the subject, if it be satisfied that such wharf, pier or bulkhead obstructs the navigation of the water course, or so encroaches on any public landing as to prevent the free use thereof, may abate the same." (Code 1887, Section 998.)

That none of said leased or owned wharves obstructed navigation or were located or encroached on any public landing so as to prevent the free use thereof, and that said wharves were and had always been private wharves.

That beginning in the month of November, 1902, a steamboat called the "Tourist" was operated continuously thereafter on the Rappahannock River by the respondents and stopped regularly at all of said wharves owned or controlled by your petitioner, and received and discharged freight and passengers thereon and therefrom without any right or authority and in defiance of the prohibition and protest of your petitioner, which was personally served on the respondent Carter in the said month of November, 1902.

That force and violence were resorted to by the said respondents, or their agents, in the use of said wharves, and for the purpose of diverting from your petitioner's steamboats the travel and traffic attracted to said wharves and steamboats by the erection of said wharves and the facilities furnished at the same for the public accommodation, and to induce said travel and traffic to patronize the steamboat "Tourist" to the great loss and injury to the business of your petitioner's steamboat line, which represented an investment of five hundred thousand dollars ($500,000), which purpose was, to a certain extent, being accomplished, and your petitioner damaged thousands of dollars and threatened with greater financial losses.

That it had always been the fixed and invariable policy of your petitioner and its predecessors to forbid the use of its wharves for any purpose except for the receipt and discharge of freight and passengers from or on its own boats only making exceptions occasionally for sailboats, and it had constantly so notified the public.

That under the decisions of this Honorable Court and of the Court of Appeals of Virginia, riparian rights of your petitioner were property and could only be taken for public use upon the payment of proper compensation.

That your petitioner had no adequate remedy at law because, among other reasons, in an action at law for trespass the heavy and serious consequential damages, suffered by your petitioner by reason of the diversion and loss of its trade caused by the

use of its wharves by the "Tourist," could not be compensated and because such damages were impossible to estimate or ascertain, and because if your petitioner had to seek its remedy at law against the respondents and the various trespassers who invaded and used said wharves in order to do business with the said respondents, the result would be a multiplicity of suits, and also because the acts of trespass were both numerous and continuous, and your petitioner was entitled to be quieted in its exclusive possession of the said wharves. Preliminary and permanent injunctions were prayed to be issued against the respondents restraining them from stopping the Steamboat "Tourist," or any other boat controlled by them, at and using, the wharves owned or controlled by your petitioner.

Third. That the respondents answered the said bill of complaint and in said answer admitted the use of the wharves as alleged and contrary to the express prohibition of your petitioner, but averred that they were willing to pay to your petitioner reasonable compensation therefor. They denied the right of your petitioner to exclude their vessel from the use of such wharves. They further denied the title and estate of your petitioner in and to the wharves, and, accordingly, your petitioner, at the taking of testimony thereafter, proved the titles to the thirteen wharves in controversy with much particularity and the copies of numerous deeds and abstracts of titles filed for this purpose account for the somewhat voluminous record in this case.

That, among other things, it was alleged, by way of defence, in said answer: that the wharves were located in the navigable waters of the Rappahannock river; that the Weems Steamboat Company was a common carrier, and, therefore, unable "to discriminate as to who or what classes of the public it would enroll among its patrons;" that the wharves were the only wharves or facilities in the localities in which they were situated; that public roads led down to the shore ends of the wharves.

Fourth. That the Circuit Court, on May 16, 1903, refused the temporary injunction, and on June 16, 1903, appointed a Special Master to take testimony, inquire into the whole matter and report back to the Court, and the Special Master, in pursuance of this authority, after the testimony, oral and documentary, had all been submitted by the respective parties, made a

report to the Court (Record, pages 130-151, 542-560), in which he found the wharves in controversy were private wharves, as contradistinguished from public wharves, and that five of the same were owned in fee by your petitioner, and the other eight were owned in fee by their respective owners and leased to your petitioner. He recommended that the relief prayed for in the bill of complaint be granted. Exceptions were filed to this report, and the case was argued and submitted on December 3d and 4th, 1903.

That on the 17th day of October, 1905, the opinion of the Circuit Court (Record, pages 567-573) was filed, in which the Court came to the conclusion that your petitioner was not entitled to the relief prayed, and thereafter, on December 23, 1905, signed an order or decree dismissing the bill of complaint at the cost of your petitioner (Record, page 574).

That from this order or decree your petitioner appealed to the United States Circuit Court of Appeals for the Fourth Circuit, on December 27, 1905 (Record, pages 575-578).

That on the 11th day of May, 1907, the United States Circuit Court of Appeals for the Fourth Circuit affirmed the decree of the lower Court in a *per curiam* opinion in which the opinion of the Circuit Court is approved and adopted (see Opinion, Appendix A).

Fifth. (a) That the Circuit Court of Appeals erred in affirming the decree of the Circuit Court dismissing your petitioner's bill of complaint at its cost;

(*b*) That peculiar reasons exist why this Honorable Court, in pursuance of the powers and jurisdiction possessed by it, and in strict accordance with its decisions, should grant a *writ of certiorari* in order that the action of the lower Courts in the premises may be reviewed.

A.

Although a brief is in accordance with the rules of Court herewith submitted, it is deemed proper to state herein the questions at issue. These questions are substantially the same as those raised and decided by this Court in the case of Louisville & Nashville Railroad Company vs. West Coast Naval Stores Company, reported in 198 U. S. 483, and may be stated as follows :

Is the Weems Steamboat Company, because it is a common carrier, bound to permit competing vessels to make use of its wharves for the purpose of such competition?

Did the petitioner become a common carrier as to these wharves in the sense that it was bound to accord to the public, or the respondents, a right to use these wharves for a purpose in no way related to its business upon payment of compensation?

Does the fact that public roads have been built to the shore ends of certain of these wharves have any effect on their character as private wharves?

Does the fact that nearly all of these wharves are built in the open country along the banks of the river, and not in towns and cities, make any difference in their real character?

Is it true that the Weems Steamboat Company could not allow the public to use its wharves or use them itself in its business as a public carrier for the public and thereafter discriminate between members of the public in their use?

Is it impossible for the owner of a public wharf to change it into a private wharf by proper notice, or does the law say once a public wharf always a public wharf?

These questions, except the last, cannot be answered in the affirmative without overruling the case of Louisville and Nashville Railroad Company vs. West Coast Naval Stores Company, 198 U. S. 483, and all of them, we submit, should receive answers in the negative.

B.

The reasons why this Court should grant the *writ of certiorari* prayed for herein are:

(*a*) The decision in this case is in direct conflict with the decision of this Court in the case of Louisville and Nashville Railroad Company vs. West Coast Naval Stores Company, 198 U. S. 483, the syllabus of which is as follows:

> "A common carrier may agree with such other carrier as it may choose to forward beyond its own line goods it has transported to its terminus; and if it has adequate terminal facilities at a seaport sufficient for all freight destined for that place, it is not obliged to allow other and competing carriers to load and discharge at a wharf

owned by it and erected for facilitating the transportation of through freight to points beyond that place."

"The fact that a wharf is built by a railroad company on what might be the extension of a public street under permission of the municipality, does not, in the absence of express stipulations, make it a public wharf or affect the company's right of sole occupancy or power of regulation thereof."

The opinion disregards the principle that a common carrier has the right to select its own agencies for conducting its business as such; and can decline to allow other carriers the use of its terminal facilities.

Atchison, Topeka & Santa Fe R. R. Co. vs. Denver and New Orleans R. R. Co., 110 U. S. 667.
Express Cases, 117 U. S. 1.

The opinion also runs contrary to the proposition set forth by Mr. Justice Harlan in Donovan vs. Pennsylvania Company, 199 U. S. 279, 294, which involved the right of a railroad company to make an exclusive contract for cab service in its station, in the following words:

"But it [meaning a railroad company] is under no obligation to refrain from using its property to the best advantage of the public and of itself. It is not bound to so use its property that others having no business with it may make profit to themselves. Its property is to be deemed in every legal sense private property as between it and those of the general public who have no occasion to use it for purposes of transportation."

The opinion herein questioned is also at variance with the proposition laid down by this Court in discussing riparian rights, in Yates vs. Milwaukee, 10 Wall. 497, 504, and contained in these words:

"But whether the title of the owner of such a lot extends beyond the dry land or not, he is certainly entitled to the rights of a riparian proprietor whose land is bounded by a navigable stream; and among those rights are access to the navigable part of the river from the

> front of his lot, the right to make a landing, wharf or pier for his own use or for the use of the public, subject to such general rules and regulations as the *Legislature may see proper to impose for the protection of the rights of the public, whatever those may be* * * *. This riparian right is property, and is valuable, and though it must be enjoyed in due subjection to the rights of the public, it cannot be arbitrarily or capriciously destroyed or impaired. It is a right of which, when once vested, the owner can only be deprived in accordance with established law, and if necessary that it be taken for the public good, upon due compensation."

The same principle has been expressly declared by the Supreme Court of Appeals of the State of Virginia, in Norfolk City vs. Cooke, 27 Gratt., 430, 435, and in Railway Company vs. Faunce, 31 Gratt., 761, 765.

If the naked right to build out a wharf is property, certainly the land to which such right is appurtenant and the wharf structure erected in the exercise of such a right, are property, which cannot be destroyed or impaired arbitrarily and of which the owner can only be deprived in accordance with established law, and if it be necessary that the same should be taken for the public good, the taking must be in the execution of the power of eminent domain and due compensation paid therefor.

If the lower Courts are correct in their view that the defendant can use the wharves in controversy upon the payment of *reasonable compensation* for their use, who is to decide what is reasonable compensation? Not the defendant, (*i. e.*, the person proposing to use the wharves) for such power would be tantamount to the power of confiscation; not the owner of the wharf, for if it has the right to fix the compensation, then it could by the use of this power accomplish the very thing which the Courts below say it has no right to do, namely, prevent the use of its own property by others. Neither could the Courts fix the fair rent for the use of these wharves, for this Court in the Express Cases, 117 U. S. page 28, says:

> "Thus, by decrees, these railroad companies are compelled to carry these express companies at these rates and on these terms, so long as they ask to be carried, no matter what other express companies pay for the same

facilities, or what such facilities may, for the time being, be reasonably worth, unless the Court sees fit, under the power reserved for that purpose, on the application of either of the parties, to change the measure of compensation. In this way, as it seems to us, 'the Court has made an arrangement for the business intercourse of these companies, such as, in its opinion, they ought to have made for themselves,' and that, we said, in Atchison, Topeka and Santa Fe Railroad Co. vs. Denver & New Orleans Railroad Co. 110 U. S. 667, followed at this term in Pullman's Palace Car Co. vs. Missouri Pacific Railway Co., 115 U. S. 587, could not be done. The regulation of matters of this kind is legislative in its character, not judicial. To what extent it must come, if it comes at all, from Congress, and to what extent it may come from the States, are questions which we do not now undertake to decide; but that it must come, when it does come, from some source of legislative power, we do not doubt. The legislature may impose a duty, and when imposed it will, if neccessary, be enforced by the Courts, but, unless a duty has been created either by usage or by contract, or by statute, the Courts cannot be called on to give it effect."

There is no Federal or State Statute regulating the use of or compensation for wharves in Virginia, or conferring jurisdiction on the Courts in such matters. Accordingly, if the decision of the Circuit Court of Appeals is sound, we have this peculiar situation presented: A right vested in certain persons to use the property of others upon the payment of reasonable compensation, and no tribunal to fix the compensation. In this connection, it is to be noted that the Courts below decide that the wharves herein mentioned are public wharves, and intimate very clearly that the owners thereof can demand reasonable wharfage. The right to erect a public wharf and to collect wharfage therefrom is a franchise, derivable only from legislative grant (Am. and Eng. Encyc. vol. 29, page 65), and yet the Courts in this case are conferring, in effect, this franchise upon the petitioner against its will.

(*b*) The decision of the lower Court is contrary to the decisions of other United States Circuit Courts of Appeals and United States Circuit Courts in other Circuits.

(C. C. A., 9th Circuit). Ilwaco Navigation Co. vs. Oregon Short Line, etc. Co., 57 Fed. Rep., 673, which is very similar to the case at bar, and in which Mr. Justice McKenna delivered the opinion of the Court.

(C. C. A., 8th Circuit). Little Rock, &c. vs. St. Louis, &c. R'y. Co., 63 Fed. Rep., 775-781; K. & I. Bridge Co. vs. L. & N. R. R. Co., 37 Fed. Rep., 567-628.

Oregon Short Line vs. North Pac. R. R. Co., 51 Fed. Rep., 465. Mr. Justice Field delivered the opinion of the Court.

Little Rock etc. Co. vs. St. Louis, &c. Co., 59 Fed. Rep., 400-404.

St. Louis Drayage Co. vs. L. & N. R. R. Co., 65 Fed. Rep., 39.

(*c*) The decision of the Courts below is opposed to the decisions of the highest State Courts. These decisions are referred to in our accompanying brief.

(*d*) The questions involved in the decision of this case are of great importance to a large number of persons owning or leasing wharves in like plight with the petitioner. In the Fourth Circuit, where the decision complained of would be binding on all the subordinate Federal Courts, there are many thousands of dollars invested in wharf property outside of towns and cities used for the purposes of inland navigation, and located on the banks of the Chesapeake bay, its numerous tributaries and estuaries, and of the great sounds and rivers of the Carolinas. This decision affects most seriously all this great class of property. Again, it vitally interests all persons and corporations engaged in the business of common carriers by water, for the opinion of the Circuit Court declares (Record, page 571): "The owners of wharves have a complete remedy within their own hands, if, in point of fact, they be private as distinguished from public wharves. They have the right to withdraw the use of their wharves entirely from the public. But they cannot allow the latter to use the wharves or use them themselves in their business as public carriers for the public and discriminate between them in their use." In other words, that a common carrier cannot have a wharf outside of towns or cities which he can devote exclusively to the use of his own vessels and to his own business. He must share the same on equal terms with other vessels. In the case

at bar, the injustice and impracticability of such a requirement was well illustrated in numerous instances where the "Tourist," the respondents' steamer, was in occupation of the petitioner's wharves at times when they were needed for the use of the petitioner's own vessels, and, accordingly, the latter had to lay out in the stream and await their turn (Record, pages 500-503).

Sixth. That the questions presented by the record in this case are questions of law, there being no substantial conflict as to the material facts, and your petitioner presents herewith, and makes a part of this petition, a duly certified copy of the transcript of the record of this case in the United States Circuit Court of Appeals for the Fourth Circuit.

Wherefore your petitioner respectfully prays that a *writ of certiorari* may be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fourth Circuit, commanding the said Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in said case therein, entitled "Weems Steamboat Company of Baltimore City, Appellant, vs. People's Steamboat Company, William D. Carter, President, et al., Appellees, No. 662," to the end that the same may be reviewed and determined by this Court, as provided in Section 6 of the Act of Congress entitled "An Act to established Circuit Courts of Appeal and to define and regulate, in certain cases, the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891; and that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem proper and in conformity with said Act; and that the said decree of the Circuit Court of Appeals and of the Circuit Court in said case, and every part thereof, may be reversed by this Honorable Court.

And your petitioner will ever pray, etc.

THE WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY,

By WILLARD THOMSON,
President.

ST. GEO. R. FITZHUGH,
NICHOLAS P. BOND,
GEORGE WEEMS WILLIAMS,
Attorneys for The Weems Steamboat Company of Baltimore City.

STATE OF MARYLAND, CITY OF BALTIMORE. } ss.

WILLARD THOMSON, being first duly sworn, says that he is the President of the Weems Steamboat Company of Baltimore City, the petitioner in the foregoing petition, and as such is duly authorized to make this affidavit in its behalf; that he has read the foregoing petition and knows the contents thereof, and that the same is true in substance and in fact, except as to those matters stated to be upon information and belief, and as to those matters, he believes the same to be true.

WILLARD THOMSON.

Subscribed and sworn to before me this 12th day of August, 1907.

W. W. POWELL,
Notary Public.

APPENDIX A.

UNITED STATES CIRCUIT COURT OF APPEALS
FOURTH CIRCUIT.

No. 662.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY,
Appellant.

versus.

PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, President, et al., Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia, at Richmond.

(Argued Nov. 8, 1906. Decided May 7, 1907.)

Before Goff and Pritchard, Circuit Judges, and McDowell, District Judge.

St. George R. Fitzhugh and George W. Williams, for the appellant, and William D. Carter, for the appellees.

Per Curiam:

A careful examination of the record impels us to an affirmance of the decree appealed from. The opinion of the Court below, reported in 141 Fed., 454, has our approval.

Opinion of the Circuit Court.

Filed October 17, 1905.

(756)

THE WEEMS STEAMBOAT CO. OF BALTIMORE, MD.
vs.
THE PEOPLE'S STEAMBOAT CO. and Others.
} In Equity.

On application for an injunction to restrain the use of certain alleged private wharves.

STATEMENT OF THE CASE.

The complainant company, a corporation of the State of Maryland, the owner and operator of a line of steamers plying between the City of Baltimore, in the State of Maryland, and the City of Fredericksburg, in the State of Virginia, said route being from Baltimore down Chesapeake bay to the mouth of the Rappahannock river, and thence up said river to Fredericksburg, filed its bill in this cause to enjoin the People's Steamboat Company, a corporation of the State of Virginia, the owner and operator of a competing steamer to that of complainant, from allowing its steamer, the "Tourist," to use certain wharves, thirteen in number, on the Rappahannock river, owned or leased by the complainant company; because, as alleged, said wharves were not public wharves, but the private property of the complainants. Upon presentation of the bill, a rule was awarded requiring the defendant to show cause why the injunction prayed for should not issue; and upon its return; affidavits in favor of and against the motion were filed; and the Court thereupon, before granting the injunction, directed a reference to a special master, with a view of ascertaining the status of the said wharves. A great mass of evidence was taken, (757) and an investigation of the titles to the property made by the special master; and in an elaborate and able report, he concluded that all of the said wharves were either owned in fee by the complainant company, or held by it under proper leases from the lawful owners thereof; and that said wharves, one and all, were the private property of said owners; and private, as distinguished from public wharves. Exceptions were filed to this report by the defendant company, and fully argued before the Court; and the question for determination is whether said wharves are in point of fact, public or private wharves. If public, the defendant has the right to the use of them as contended; whereas, if private, such right does not exist.

The Rappahannock river is one of the ancient and important waterways of the Commonwealth. The distance from its point of navigability at the city of Fredericksburg, to where it empties into Chesapeake Bay, is about one hundred and twenty miles; and considerable commerce is conducted upon it; and the complainants and their predecessors have for a long number of years, forty or fifty, operated a line of steamers

from the City of Baltimore, over said route ; and on said river are located some of the oldest villages and towns in the State ; notably at two of the wharves in question, Tappahannock and Port Royal—the latter place being one of the oldest, as it was at one time one of the largest ports of entry, in the Commonwealth ; although now it has only some few hundred inhabitants. The complainants are the owners of six of the wharves under consideration, having acquired the same from time to time during the operation of their line of steamers ; and they succeeded in leasing the remaining seven of said wharves, shortly before the institution of this proceeding, and after the defendant company inaugurated its line of steamers on said (758) river. While the said thirteen wharves involved in this proceeding by no means include all the wharves or stopping places for vessels on the river, it may be said that they embrace the important wharves from which the passenger and freight business is chiefly procured, in passing up and down the river ; and that the business from said wharves is large. With possibly a single exception these wharves are at the termini of public highways in the counties in which they are respectively built ; the character of the business consists of passenger travel, and merchandise received over said wharves, consisting of the general products of the country ; and they are the usual shipping places of persons living in the immediate neighborhood of the wharves, and of the inhabitants of the country for some distance in the interior. That at said wharves, United States post offices are established, at which the mail of the people for the surrounding country is procured ; and that as to the wharves leased as aforesaid, the same were leased upon a rental of a commission of ten per cent. of all freight charges and passenger fares collected by the complainant at said wharves ; the owner of said wharves maintaining an agent there to assist in mooring the vessels of the complainants making landings there ; and in receiving and forwarding freight therefrom ; and at some of the wharves sail vessels from time to time moor, and lade and unlade, making proper compensation to the owners of the wharves for their use.

St. George R. Fitzhugh and George W. Williams, for complainants ; and William D. Carter and A. T. Embrey, for respondents.

WADDILL, DISTRICT JUDGE :

(After stating the facts as above.)

While the special master is doubtless correct in his findings as to the actual ownership of the property rights in said (759) wharves, namely, that they are the individual property of the several owners thereof, and as such pass regularly by the laws of descent and purchase, it by no means follows that said wharves are private *quoad* the public; that is, either the citizens desiring to use the wharves to reach the means of transportation upon and over said river, or owners of such methods of transportation plying the waters of said river; the obligation upon each being to render and pay to such wharf owner reasonable wharfage and charges for the use of his property, under such proper and reasonable regulations as might be imposed either by law, or by the owner of the property.

Wharves belong to a class of property in which the public is concerned, and as to which the government has always reserved the right, as between its citizens, to regulate and control. This has prevailed in England from time immemorial; and in this country from its earliest colonization; that is to say, the government has exercised the authority to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, &c. And hence this class of property, when used by the public, becomes affected with a public interest, and it ceases to be *juris privati* only. As was said by Mr. Chief Justice Waite, in delivering the opinion of the Court and discussing the subject under consideration, in Munn v. Illinois, 94 U. S. 126, "This was said by Lord Chief Justice Hale more than 200 years ago, in his treatise De Portibus Maris, 1 Harg. Law Tracts, 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore one devotes his property to a use in which the public has an interest, he in effect, grants to the (760) public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."

The question of what is technically a public, and what a private wharf, may be a matter of some doubt; but there should be no serious question in this case, as to the wharves under consideration. The Supreme Court of the United States in Dutton and others v. Strong and others, 66 U. S. 1, 32, had under consideration this precise question, as to when piers,

landing places and wharves were private, or became public wharves; although the property in such wharves remained in the individual owner; and in apt language said: "and whether they are the one or the other may depend, in case of dispute, upon several considerations; involving the purpose for which they were built; the uses to which they have been applied; the place where located; and the nature and character of the structure."

These wharves, it must be borne in mind, are not the landing places or piers of a line of steamers in a city; but mere wharves along the banks of a river in the country; in the main at the termini of public county roads; and hence the means, and only means, whereby the people of the community can reach the river, and use the mediums of commerce navigating the same. These wharves were all built that they might be so used, and for the profit that was in the use; and they have been continually thus used; some of them yielding to the owners, because of the travel upon and over them by the public, with the complainant and others, a large return; and so long as they are thus used, as between the public and their owners, they are public, as distinguished from private wharves.

Nor does the fact that the complainant does not charge wharfage *eo nomini* in its transactions with its patrons, change (761) the character of the wharves; since they built, used and maintained them for the public generally, who used their wharves and their steamers, paying their passage and freight money, which includes wharfage; and they cannot thereby, whether actual wharfage is charged or not, either discriminate as between the public seeking to go upon and over the wharf, or public carriers seeking to lawfully ply the waters of said river. The complainant is a public carrier, using a public waterway; and it cannot by the mere fact of not charging wharfage at a wharf, used generally by the public, secure a right to prevent any part of the public from using the wharf upon equal terms with others. And least of all can they cut off a competitor lawfully engaged in the navigation of such waterway, from the free use thereof, and the right to have and receive the patronage of the public lawfully using such wharf, upon making or proferring proper compensation therefor. It will be readily seen that if the complainant could exercise such a privilege as this, it would be a simple thing for the owners of a line of steamers, to acquire all the wharves on the river, and thereby

subject the public to a monoply from which there would be no escape; and deny to them the free use of the public waters of the commonwealth. If such a thing were possible, the continued improvement of rivers and harbors by the general government would quickly cease; and the commerce of the country receive a serious set back.

The question of private ownership of wharves is fully recognized in the case of Dutton et als. v. Strong et als., *supra*, p. 33, by the Supreme Court of the United States, in this language:

"Undoubtedly, a riparian proprietor may construct any one of these improvements *for his own exclusive use and benefit;* and, if not located in a harbor, or other usual resting place (762) for vessels, and if confined within the shore of the sea or the unnavigable waters of a lake, *and it had not been used by others, or held out and intended for such use,* no implication would arise, in a case like the present, that the owner had consented to the mooring of the vessel to the bridge pier;" (Court's italics) that is to say, riparian owners can construct and maintain for their own exclusive use and benefit, private wharves upon their property; and as long as they so use them, they are not affected with a public interest; and a temporary use by another, by special arrangement with the owner, might not affect the character of such wharf; (Transportation Co. v. Parkersburg, 107 U. S., 691, 699.) But a general or habitual use thereof by persons other than the owner, will relieve the property of its private character. No hardship would befall the owner of the private property by this interpretation, in that it could or might be claimed that it was a deprivation thereof, and the appropriation of the same to public use, without proper compensation. This phase of the question was considered by the Supreme Court of the United States in the case of Munn v. Illinois, 94 U. S., *supra*, 125, and the suggestion refuted; and in this same case, the Court, at page 126, speaking of the owner, said: "He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control." The owners of wharves have a complete remedy within their own hands, if, in point of fact, they be private, as distinguished from public wharves. They have the right to withdraw the use of their wharves entirely from the public. But they cannot allow the latter to use the wharves, or use them themselves in

their business as public carriers for the public, and discriminate between them in their use.

(763) In what has been said, no opinion is meant to be expressed upon any question affecting the ownership of wharves and piers in cities and towns of the Commonwealth, or harbors or places where there may be more than one landing place; as entirely different considerations may determine a controversy arising over such property, and under such circumstances.

The fact of the existence of a different rule as to wharves like the ones in question, along the banks of a river in the country, where they may be said to be the only means of communication by the public with the waterway, from those in the harbors of cities or towns, where there are not unfrequently many and other wharves and landing places for the landing and embarking of passengers and freight, has long since been recognized; and much can be said as to the necessity for, and the wisdom of such distinction. The location of wharves in the country, the meandering of the river, the character of the river banks, the condition of marshes along the river courses; the fact that the forests and country along the river and adjacent to such wharves for long distances might not be opened up, would one and all tend to show the reason for the existence of a different rule. This fact was recognized by Sir Mathew Hale long ago; and the Supreme Court of the United States, speaking through Mr. Justice Bradley, referring to that learned jurist, in Transportation Co. v. Parkersburg, 107 U. S., 699, *supra*, said: "Whether a private wharf may be maintained as such, where it is the only facility of the kind in a particular port or harbor, may be questioned." And in treating of this subject, Lord Hale, in his treatise De Jure Maris, Hargreaves Law Tracts, 77, says:

"A man, for his own private advantage, may, in a *port or town* set up a wharf or crane, and may take what rates he and his customers can agree for cranage, wharfage, housellage, (764) pesage; for he doth no more than is lawful for any man to do, viz.: makes the most of his own. * * * If the king *or subject* have a *public wharf*, unto which *all persons that come to that port must come and unlade and lade their goods* as for the purpose, because they are the wharfs only licensed by the king, or *because there is no other wharf in that port*, as it may fall out where a port is newly erected; in *that case there cannot* be

taken arbitrary and excessive duties for cranage, wharfage, pesage, etc., neither can they be enhanced to an immoderate rate; but the duties must be reasonable and moderate, though settled by the king's license or charter. For now the *wharf and crane and other conveniences are affected with a public interest*, and they cease to be *juris privati* only; as if a man set out a street in new building on his own land, it is now no longer bare private interest, but is affected by a public interest."

This quotation from Lord Hale has been referred to approvingly by the Supreme Court of the United States at least twice; in the case of Munn v. Illinois, 94 U. S., *supra*, and Transportation Co. v. Parkersburg, 107 U. S., 699, *supra*. Reference may also be had to Gould on Waters, 3d Ed. sec. 119; Barrington v. Commercial Dock Co. (Washington State Supreme Court), 33 L. R. A., 116, and cases there cited; Oregon Short Line v. Ilwaco Ry. & Nav. Co., 51 F. 511; Indian River Co. v. E. C. Transportation Co., 10 S. E. Rep., 485; Sherlock v. Bainbridge, 41 Ind., 35, 13 Am. Rep., 302.

The array of authorities cited by the complainant in support of its several contentions, and which largely treat of the rights of riparian owners to the status of wharf property in cities and towns, and ports where there are more than one wharf, and the title to private property in wharves, have been carefully considered by the Court; and while some of the cases ap- (765) parently conflict with the views herein expressed, the Court feels controlled by the authorities relied upon as the basis of this decision.

The conclusion of the Court is that the injunction asked for should be refused, at the cost of the complainant.

IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1907.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY,
a Body Corporate, Petitioner,

vs.

PEOPLE'S STEAMBOAT COMPANY, William D. Carter, President; A. W. Embrey, Vice-President; A. Randolph Howard, Treasurer; WILLIAM D. CARTER, CRADDOCK F. O. ARCHER, Respondents.

The respondents in the above-entitled case are hereby notified that on Monday, the 14th day of October, 1907, during the motion hour of the Supreme Court of the United States, the petitioner, the Weems Steamboat Company of Baltimore City, will present to the said Court, in its Court room, at the Capitol, in the city of Washington, D. C., a petition that it cause to be issued a writ of *certiorari* to the United States Circuit Court of Appeals, for the Fourth Circuit, requiring the said Circuit Court of Appeals to send up a full and complete transcript of the record in said cases including the judgments entered therein in order that the same may be reviewed by the Supreme Court in accordance with the law in such cases made and provided.

ST. GEO. R. FITZHUGH,
NICHOLAS P. BOND,
GEORGE WEEMS WILLIAMS,
Attorneys for Petitioner.

To WILLIAM D. CARTER, ESQ., Attorney for the Respondents.

A copy hereof, together with a copy of the petitioner's brief in support of said petition received this 19th day of August, 1907.

WM. D. CARTER,
Attorney for the Respondents.

No. [redacted]

IN THE SUPREME COURT OF THE UNITED [redacted]

OCTOBER TERM, A. D. 1905

No. [redacted]

WEBBS STEAMBOAT COMPANY OF BALTIMORE CITY, a Body Corporate, *Petitioner*,

vs.

PEOPLE'S STEAMBOAT COMPANY, William D. Cl[redacted], President; A. W. Bowne, Vice-President; A. Hamilton Howard, Treasurer; Wendell D. Dawes, Chancellor, [redacted], *Respondents*.

[redacted] Petitioner of the WEBBS STEAMBOAT COMPANY OF BALTIMORE CITY, [redacted] and complained to the United States Circuit [redacted] Appeals for the Fourth Circuit.

BRIEF FOR PETITIONER.

Law Reporter Publishing Co., 8 E. Lexington Street, Baltimore, Md.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1907.

No.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, a Body Corporate, *Petitioner*,

vs.

PEOPLE'S STEAMBOAT COMPANY, WILLIAM D. CARTER, President; A. W. EMBREY, Vice-President; A. RANDOLPH HOWARD, Treasurer; WILLIAM D. CARTER, CRADDOCK, F. V. ARCHER, *Respondents.*

On Petition of the WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, for *writ of certiorari*, to the United States Circuit Court of Appeals for the Fourth Circuit.

BRIEF FOR PETITIONER.

For convenience, we shall in this brief call the petitioner and respondents herein "plaintiff" and "defendants" respectively, which were the respective positions originally occupied by them in this litigation.

The plaintiff filed in the United States Circuit Court for the Eastern District, a bill in equity against the defendants to restrain them from stopping a steamer called the "Tourist," at certain wharves owned or leased by the plaintiff, and from receiving therefrom or discharging thereon, freight and passengers carried or to be carried by that steamer. The steamer

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For convenience, we shall in this brief call the petitioner and respondents herein "plaintiff" and "defendants" respectively, which were the respective positions originally occupied by them in this litigation.

The plaintiff filed in the United States Circuit Court for the Eastern District, a bill in equity against the defendants to restrain them from stopping a steamer called the "Tourist," at certain wharves owned or leased by the plaintiff, and from receiving therefrom or discharging thereon, freight and passengers carried or to be carried by that steamer. The steamer

was being operated as a common carrier, in competition with the steamers of the plaintiff; and the defendants, although they had been warned not to use the wharves in question, continued to do so.

The facts are:

That shortly after the close of the Civil War, Mason L. Weems, late of Baltimore city, and certain associates, commenced the operation of a line of steamboats for the carriage of freight and passengers between Baltimore city, in the State of Maryland, and Fredericksburg, in the State of Virginia, stopping at intermediate points on the Rappahannock river, which empties into the Chesapeake Bay, and is navigable from its mouth to Fredericksburg, situated thereon. In order to make convenient and satisfactory landings at the various stopping points, it was necessary to purchase sites and build therefrom wharves, or to acquire, by lease or purchase, wharves then in existence, which have been renewed from time to time.

From the commencement of the line down to the filing of the bill of complaint in this case, Mr. Weems and his associates and their successors acquired the following wharf properties situated in the State of Virginia, on the Rappahannock river, in the following manner:

Port Royal Wharf, in the county of Caroline. This wharf and the land upon which it was built were purchased by Mr. Weems' associates in 1866 (Record, pages 334-335).

Leedstown Wharf, in the county of Westmoreland. This wharf and the one-half acre more or less of land from which it was built into the river, were purchased in 1869 by Mr. Weems and his associates (Record, pages 377-378).

Tappahannock Wharf, in the county of Essex. Mr. Weems and his associates acquired title to the wharf and land upon which it was erected by two deeds, one dated May 28, 1867, and the other dated July 24, 1869 (Record, pages 394-398).

In 1895 a new wharf was being constructed by the plaintiff at or near the old wharf site, and during construction a certain

Robert E. Wynn claimed that the new structure was being built on land belonging to him. In order to obviate any controversy, the plaintiff purchased any right the said Wynn might have had in said land, and took a deed therefor (Record, pages 402-403).

SHARP'S WHARF, in the county of Richmond, together with the land upon which it was built, was purchased by Mrs. Williams and Mrs. Forbes in 1876 (Record, pages 360-361). These ladies were the sole heirs-at-law and devisees of Mason L. Weems, and after the death of the latter, which occurred in 1874, acquired, by purchase, all the interest of Mr. Weems' associates in and to the steamers and wharf properties above mentioned. Thereafter they operated the line of steamers on the Rappahannock, which, with other lines of steamers on other routes was commonly known as the "Weems Line" until 1892, when they caused to be incorporated under the Maryland Laws the plaintiff corporation, and conveyed to it all the steamers and wharf properties owned by them constituting the so-called Weems Line, and including the wharf properties herein mentioned.

WELLFORD'S WHARF, in the county of Richmond. This property, including wharf structure and land, was purchased in 1901 (Record, page 320) by the plaintiff, but money to build this wharf was furnished to the former owner by the plaintiff (Record, page 235).

The Special Master appointed by the Circuit Court to take testimony and report back his conclusions on the law and facts, found that the fee-simple titles to those five wharf properties were in the plaintiff (Record, pages 139-142, 545). His Honor, Judge Waddill, who sat in the Circuit Court, took the same view (Record, page 569).

What use was made of these wharves, appears from the testimony of Mr. Henry Williams, who was the president of the plaintiff from its incorporation, and prior to that time from 1874 down, had continuously acted as the agent and represen-

tative of the owners of the Weems Line in the management of the property. He testified as follows:

Q. "What has been your policy ever since October, 1874, when you took charge of the line between Fredericksburg and Baltimore, touching the permission to other river craft to receive and discharge freight at the wharves owned by you?"

A. "I have never allowed any other boat to land at our wharves. I have never given permission except to a friend or patron of the line who would occasionally write and say that he wanted a cargo of coal landed, or wanted to take off some corn, or asking some favor of the kind, and I have always granted it when I could, provided it did not interfere with us, with the exception of Port Royal Wharf, where Mr. Taylor made some arrangement with the wharf agent there to allow vessels to land there and pay wharfage; but soon after I got control I was afraid that it might be construed as giving the public the right to go there if that was permitted, and I forbid it positively; and for the last twenty years, have not allowed a cent of wharfage to be taken from anybody."

Q. "At any of the wharves?"

A. "At any of the wharves" (Record, page 221).

Q. "Then am I to understand or not, that the five wharves now owned by the Weems Steamboat Company have never been held out as public wharves?"

A. "They have never been held out as public wharves and I never built a wharf since I had control unless we had the clear fee simple title to the land on which it was built. I never would build a wharf at the foot of a public road, and I always insisted upon it that the wharves were our own private property, built on our land, on which we paid taxes regularly, and that it is as much a trespass for any people to go on them without permission, as it would be for them to come into my private house, because we have a deed to the land, and it is *only used for our business*, just as a merchant used his store, and the man who comes there is a trespasser, and nothing but a trespasser, in my opinion" (Record, page 222).

Q. "And you state that with the exception of about two years after you took charge, in which you permitted

wharfage to be collected at Port Royal under arrangement made by Captain Taylor in his lifetime, that you have never allowed any wharfage to be collected?"

A. "I cannot say the number of years, it has been so long ago; but a few years after I took charge, I stopped that business, and since have taken not one cent for wharfage."

Q. "Have or have not your instructions invariably been to all your agents at the wharves owned by your company, or by the two ladies prior to the charter of the company, that they were not to charge any wharfage, or permit anybody to stop there except as a personal favor?"

A. "I have invariably told them."

Q. "Did you ever publicly proclaim that they were private wharves?"

A. "I put up notices on the wharves that they were private property, and warning steamers that they were trespassers in coming to it."

Q. "Did you not as soon as you were informed that the 'Tourist' was claiming the right to stop at the wharves owned and leased by you on the Rappahannock, serve notice on them that you forbade it?"

A. "I did" (Record, pages 222-223.)

Q. "I understand you to say that wharfage from any source has been declined at all times since 1874?"

A. "With the exception of a few years at Port Royal. They did collect some wharfage there under a previous agreement, but a year or two after I took charge, I stopped it because I did not want it to look as though it were a public wharf by charging wharfage, and we declined to receive it. We declined to let boats come to it. If a friend wrote to us stating that he would like to get permission to load a boat there—as was the case, for instance, with Mr. Powell and Mr. Thornton—we would give them the permission and charge them nothing for it" (Record, page 237).

The agents employed by the plaintiff at these various wharves to manage the same confirmed Mr. Williams' testimony.

Aakins, Agent at Port Royal (Record, pages 210, 211, 213).

Baxter, Agent at Leedstown (Record, page 263).
Wright, Agent at Tappahannock (Record, pages 202, 203).
Sharp, Agent at Sharp's (Record, page 187).
Settle, Agent at Welford's (Record, page 182).

In addition to the above-mentioned wharves, owned and used by the plaintiff as aforesaid, the plaintiff leased from their respective owners the following wharves situated in the State of Virginia:

WHEALTON'S WHARF, CARTER'S WHARF AND NAYLOR'S HOLE WHARF, in the county of Richmond.

The first of these wharves was built about 1892, half of the cost of the same being furnished by the plaintiff (without interest) to the land owner, John H. Whealton, upon the express understanding that the plaintiff's steamers should have the exclusive right to stop at the wharf to be constructed, except that sail-boats could stop at this wharf, provided they did not in anywise interfere with the stopping of the plaintiff's steamers (Record, pages 301, 281, 171).

The owner of this property testifies that he never received any wharfage from anyone except the plaintiff, until the defendant's steamer made her appearance (Record, page 171).

CARTER'S WHARF AND NAYLOR'S HOLE WHARF were also leased exclusively to the plaintiff by the owners thereof with the right to them to allow sail vessels to land provided they did not interfere with the use of these wharves by the plaintiff's steamers (Record, pages 283, 293). The evidence fails to show that Carter's wharf was ever used by any boats except those of the plaintiff and of the defendants. The traffic over Naylor's Hole wharf, except that of the plaintiff, amounted to nothing, sail vessels using it very occasionally under special arrangements between the wharf owner and the consignees or shippers (Record, pages 177, 180) and no steamer ever stopping there except those of the plaintiff and the defendants.

WARE'S WHARF AND BOWLERS' WHARF, in the county of Essex.

WARE'S WHARF was built for the plaintiff's predecessors in 1873, and they and its successors have had exclusive use of it since that date (Record, pages 192-193). This exclusive use was subsequently evidenced by a lease to the plaintiff dated January 21, 1903 (Record, page 289), which, however, permitted sail vessels not interferring with the plaintiff's steamers to land. Sail vessels, however, only carried or brought such freight from or to the wharf as the plaintiff did not want, and 99% of the traffic over this wharf is handled by the plaintiff's steamers (Record, page 200).

BOWLER'S WHARF. The Special Master found from the evidence that this wharf was built on private property, and was under the exclusive control of the plaintiff under a verbal agreement, which agreement was subsequently reduced to writing in the shape of a lease (for lease see Record, page 279), and that sail vessels occasionally landed there by special permission of the owner (Record, page 134).

The evidence shows that the money to build this wharf was advanced by the plaintiff, and it was built for the plaintiff's use (Record, page 166).

BAY PORT WHARF, in the county of Middlesex, and MONASKON WHARF, in the county of Lancaster, are both owned by the same owner, and were leased to the plaintiff exclusively with the right to the owner to allow sail vessels which did not interfere with the plaintiff's steamers to land there (Record, page 276). These wharves were built for the use of the plaintiff and its predecessors (Record, page 162), but occasional sail vessels were allowed to use them, under special permission from the owner, to land coal, etc.

WATER VIEW WHARF, in the county of Middlesex. In 1901 this wharf was leased by the owner to the plaintiff, with the express understanding that no steamers should land there except the plaintiff's (Record, pages 292-293). Under special arrangements with the owner, sail vessels occasionally landed there (Record, page 255), but more than 99% of the traffic over the wharf was carried by the plaintiff (Record, page 254).

The Special Master found that all the wharves were built on private property and that the eight leased wharves were in the possession of the plaintiff as lessee, and that for the purposes of the suit the plaintiff should be treated as the owner thereof.

The uncontradicted evidence showed that the plaintiff and its predecessors for about forty years operated the only steamers on the Rappahamock river with the exception of two or three trips made years ago by the steamers "Lady of the Lake," "Eliza Hancock" and excepting, of course, the steamboat known as "Tourist," operated by the defendants. Until the last mentioned steamer came upon the scene, in November, 1902, the only vessels using the wharves in question were those of the plaintiff and very occasional sail-boats landing at certain of the wharves under special arrangements in each instance with the wharf owners. The wharves were built for the use of the plaintiff and its predecessors.

The evidence shows that these wharves and the lands upon which they were built were unfenced and that in the case of certain of these wharves public roads were opened to them, or to the lands upon which they were constructed after their construction. The wharves were not built in harbors but along and from the banks of the river at points convenient for traffic, and were erected, kept in repair and taxes paid thereon by their owners at considerable expense. The plaintiff had invested in this line of steamers and its wharf properties about half of a million of dollars.

Jurisdiction was vested in the Federal Court by reason of the diversity of citizenship existing between the plaintiff, a resident and citizen of Maryland, and the defendants, citizens of Virginia and residents of the Eastern District of Virginia, and the amount in controversy was alleged and proven to be many times greater than the jurisdictional amount.

The Circuit Court dismissed the plaintiff's bill of complaint and this action was affirmed by the United States Circuit Court

of Appeals for the Fourth Circuit, which adopted and approved the opinion of the lower Court.

We maintain the proposition that under the evidence in this case, and the law applicable thereto these wharves in controversy were *private property* in every sense except that persons desiring to transact business with the plaintiff, as a common carrier, could not be excluded therefrom while transacting such business, and being private property in every sense, with this exception, the plaintiff had the undoubted right to prevent the use of these wharves by a corporation, which was operating a steamer in direct and open competition with the plaintiff's steamers, and stopping regularly at these wharves against its oft repeated protests and warnings not to do so, and for the purpose not of transacting business with the plaintiff, but to take away and if possible entirely destroy the business of the plaintiff built up by many years of faithful service, and the investment of many thousands of dollars.

ARGUMENT.

The plaintiff is not, because it is a common carrier, bound to permit competing vessels to make use of its wharves for the purpose of such competition.

We submit that this proposition is decided by this Court in the case of the Louisville & Nashville Railroad Company vs. West Coast Naval Stores Company, 198 U. S. 483.

In the case cited the defendant railroad company had a wharf in the bay of Pensacola, which was used by it for shipping goods destined to other ports. It limited the use of the wharf to traffic handled by vessels in regular lines, *running in connection with* the Louisville and Nashville Railroad and vessels belonging, or consigned to Gulf Transit Company, *an agency of the defendant*, and also made use of said wharf for traffic in connection with vessels, other than those above referred to, *subject to special arrangement.*

The plaintiff claimed that the wharf was a public wharf, and that it might use it to ship its freight by *other boats than those running in connection with the defendant;* which the defendant declined to permit.

The counsel for the plaintiff argued:

The wharf was operated by the Railroad Company, not as a private wharf, but for the use not only by the boats operated by it and the Gulf Transit Company, but also by all persons with whom the Railroad Company should see fit to make "special arrangements." That is, it appeared that the wharf was not a private, but a public wharf. It was used not only in the *private business* of the Railroad Company (the counsel concedes here, that if used exclusively for the steamers of the Railroad Company, that would be "private business"), but as a facility in the navigable waters of the bay of Pensacola in aid of commerce, engaged in by the Louisville and Nashville Railroad Company and by the Gulf Transit Company and by all the rest of the public. It is perfectly obvious that the course of the Company was to give to a very large portion of the public the right to use its wharf, with the result that such wharf became a facility in which the public, as a public, had become interested in such manner and to such extent as to deprive the defendant of the right to claim that it was a private wharf, in the operation of which the public were not entitled to insist that equal privileges were to be accorded to all persons requiring them in their respective businesses.

He cited in support of his contention—

Munn vs. Illinois, 94 U. S. 125.
Hale's De Portibus Maris.
Dutton vs. Strong, 1 Black, 33.
Barrington vs. Commercial Dock Company, 45 Pac. 748.

We thus have a repetition of the reasoning of the Circuit Court in our case, with the same authorities as those relied on by that Court cited to sustain such reasoning.

Mr. Justice Peckham, in delivering the opinion of the Court, pages 493-494, (italics ours) says:

"Counsel for plaintiff now asserts, and we assume that the gravamen of plaintiff's complaint is, *not that the defendant would not transport plaintiff's goods or any part of them on defendant's line from the wharf in question,* 'but only that defendant would not permit plaintiff's goods to be at, from or by means of defendant's wharf loaded upon, or delivered to the said vessels,' with the managers of which plaintiff had contracted to have its goods transported to other ports. This means of transportation, by such vessels as plaintiff should choose, is asserted by it as a right, because it contends that the wharf of the defendant, under the averment to that effect in the declaration, and not denied, in terms, in the plea, taken in connection with the facts stated in such plea, was a public wharf, *or that, at least, the defendant had devoted it to a public use.* The defendant in its plea sets up facts which it avers show that the wharf was not a public one.

"The plaintiff insists that the defendant's plea shows that the defendant built and used the wharf itself, and permitted a large part of the public to use it, including at any rate, *those who were engaged in traffic handled by vessels belonging to regular lines running in connection with the defendant, and also including vessels belonging or consigned to the Gulf Transit Company, an agent of defendant, together with those who were using the wharf under some special arrangements between them and the defendant.* All this, plaintiff contends, amount to making the wharf *a public one,* or at least that it thereby became a *facility,* to the use of which the public, as a public, had a right on payment of reasonable compensation. If plaintiff chose to employ, for the further transportation of its goods, *the vessels, with the managers of which the defendant had some business arrangement or contract,* it is not denied

that the defendant would and did permit such transportation. In this respect there is no allegation that the plaintiff did not have equal facilities with all other shippers. Defendant's plea avers that it did give to the plaintiff the same facilities for shipping its goods over defendant's wharf that it gave to any and all shippers. In brief, the facts seem to be *that the only complaint of the plaintiff is that defendant will not permit competing vessels to make use of its wharf for the purpose of such competition.*"

This was the identical complaint made by the defendants in our case, and the said defendants resorted to *intimidation* and *violence* in order to compel the use of plaintiff's wharves by the "Tourist," *a competing steamboat.*

Mr. Justice Peckham having thus clearly defined the issue between the plaintiff and the defendants, proceeds (italics ours) (pages 494-495):

"We do not see that the fact that the wharf was erected under authority from the city, at the foot of a public street of the city, makes any material difference in the character of the wharf, or that the right of the plaintiff to select its own vessels to continue from that wharf the transportation of its goods is on that ground enhanced, or the right of the defendant to control the wharf for its own use when erected is thereby diminished. The right to erect the wharf was granted by the proper authorities, and so far as the record shows it was granted without imposing any conditions as to its use by the public. We think the plaintiff had no right of access to the wharf founded simply upon the fact that it was erected under proper authority, in the harbor of Pensacola and at the foot of one of the public streets of that city. The question of the rights of the plaintiff must really turn *upon the character of the use of the wharf*, whether it is public or private.

"The argument upon the part of the plaintiff is in substance this: True, defendant has erected a wharf,

which is not in fact intended or used as the terminus of its road at Pensacola, adequate yards and depots having been furnished by the defendant for all goods and passengers destined to Pensacola only; but the wharf has been erected to enable defendant to more conveniently carry out contracts for transportation beyond its own line, which it was not compelled to make, and which it could carry out by such agencies as it chose; but the plaintiff, having goods destined for points outside of Florida, insists upon its right to use the road of defendant, not to carry these goods to Pensacola, but to defendant's wharf, so *that the plaintiff may there transfer them into vessels which it has arranged to take them; in order to do this it is necessary that defendant be compelled to share its possession of its own wharf, with the managers of these other vessels; for this possession plaintiff is prepared to make reasonable compensation.* This right on the part of the plaintiff is urged as the result of the *action of defendant in permitting the use of the wharf as stated in the plea.* By such use it is contended *that the defendant in effect dedicated the wharf to the public, or at least has granted to the public an interest in the use of the wharf.*"

In this case the Louisville and Nashville Railroad Company *not only used the wharf for its own line of vessels,* but also allowed its use *to another extensive line, known as the Gulf Transit Company, which was an independent line,* but *running in the interest of and not in opposition to the owner of the wharf,* and also allowed *any other company with which it made satisfactory arrangements to use its wharf,* which was obviously a much more extensive public use than that of the Weems Company of its wharves along the banks of the Rappahannock, not handling one thousandth part of the traffic of the wharf in the case under consideration.

Mr. Justice Peckham proceeds (italics ours) (pages 495-496):

"We are of opinion that *the warf was not a public one*, but that it was a mere *facility, erected by and belonging to defendant*, and used by it, in connection with that part of its road forming an extension from its regular depot and yards in Pensacola, to the wharf, for the purpose of more conveniently procuring the transportation of goods beyond its own line, and *that defendant need not share such facility with the public or with any carriers other than those it chose for the purpose of affecting such further transportation.*"

"Neither the public nor the plaintiff had such an interest in the wharf as would give to either the right to demand its use on payment of reasonable hire * * *."

"The city or State authorities in granting the right to erect such facilities might, of course, have attached such conditions as they thought wise, but in their absence neither the public nor this plaintiff, as the owner of goods, would have the right on this state of facts *to go to the wharf with vessels for the purpose of continuing transportation of goods in competition with the defendant.* The defendant never became a *common carrier, as to this wharf in the sense that it was bound to accord the public or to plaintiff a right to use it upon payment of compensation.*"

The plaintiff has never collected a cent for wharfage from any person, and never permitted any other craft, but its own, to stop at its wharves, except in isolated instances under special circumstances and for special purposes.

Mr. Justice Peckham again (pages 496-497) says:

"But plaintiff demands more than this; it demands that defendant shall carry plaintiff's goods over its rails thus laid, in order that plaintiff *may itself forward its goods by vessels of its own selection, and that defendant shall surrender possession of enough of its wharf to enable plaintiff to do so.*

"That the defendant had the right to choose its own agencies, and grant to them the exclusive privilege of access

to its own wharf, which it built only for the purpose of continuing the transportation of goods which it had transported to the end of its line, has in effect been decided by this Court."

If the defendant had the right in that case to choose those that should use its wharf and grant them the exclusive privilege of access thereto, why could not the plaintiff grant the exclusive privilege of access to its wharves to those only who proposed to use *its means of transportation* and exclude therefrom those who sought to use said wharves in order to patronize a *competitor?*

Mr. Justice Peckham further (page 498) said in this case:

"A private wharf may exist on the shores of a navigable river or lake, or in a harbor of a city from which access is obtained directly to the sea," citing Dutton vs. Strong.

Mr. Justice Peckham quotes with approval the following language of the Railroad Company's counsel, (italics ours) that:

"*The very nature of a wharf* and its inadequacy to meet the demands of every incoming vessel necessitates *that its use should be exclusively for those with whom the carrier enters into arrangements,*" and (pages 499-500) says:

"The reasons for permitting such use of the wharf are manifold. Without it the commerce of the country in the large cities would be cramped, if not very greatly damaged, by the uncertainty of finding quarters for the regular and swift unloading and loading of the vessels. But the capacity of a wharf is necessarily limited, and if the wharf were open to all comers in their turn there could be no certainty as to any particular vessels being able to reach the wharf at any definite time, and consequently there would be a like uncertainty as to when such vessel would be able to depart with its load. One, unexpected, so-called, tramp vessel might, by arriving a few hours in advance, take

possession of all that was left of the wharf for the purpose of loading, and thus prevent the regular steamer, arriving a little later, from coming to the dock, unloading its cargo, and then loading with goods from the railroad. In this way there would be confusion in time, and in the possession of the wharf by the different vessels, and *its value for the purpose for which it was erected would be greatly reduced, if not wholly destroyed.*

"The principle herein recognized has also been affirmed by this Court in what are known as the *Express Co. Cases*, 117 U. S. 1, where it was held (because the facilities were necessarily limited) that railroad companies had the right to contract with particular express companies for the transportation of the traffic of the latter over the lines of their railroads, and that the railroad company was not bound to transport the traffic of *independent express companies* over its lines in the same manner in which it transported the traffic of the particular companies contracted with; in other words, that the railroad companies were not bound to furnish, in the absence of a statute, to all independent express companies, equal facilities for doing an express business upon their passenger trains."

The Court cited, with approval, Ilwaco Co. vs. Oregon Short Line, 57 Fed. 673, *infra*.

In the case of the wharves of the plaintiff, the foregoing language of Mr. Justice Peckham is peculiarly pertinent. These wharves being built, exclusively to serve its line of steamers, in a very sparsely populated section of the country, are naturally very restricted in their size and capacity, and if opened, as the lower Court decided they should be, to the free use of all crafts, both steam and sail vessels, their value to the Weems Company would be *practically destroyed*, for but one vessel can load and unload at any one of them at a time; hence a vessel arriving at those wharves just ahead of the

plaintiff's boat might hold the wharf in loading or unloading grain for twelve hours, thus depriving the owner of the wharf of its use for that trip altogether. That the wharves of the plaintiff were used by the defendant's boat so as to delay the plaintiff's boats, which had to lie out in the stream until the defendant's boat transacted its business at said wharves, see Record, pages 500-503.

It will be noticed that the remarks of Mr. Justice Peckham as to the necessity of allowing the wharf owner to determine who shall have the privilege of using his wharf are not confined to wharves in cities, but his reasoning applies alike to all wharves that have not been expressly and intentionally dedicated to public use by the owner thereof.

We have quoted at considerable length from the opinion of this Court in the case in 198 U. S 483, because we submit that the principles therein laid down, if applied to the uncontradicted facts of the case at bar, lead to a different conclusion from that which was arrived at by the lower Courts, and sustain the plaintiff's contentions.

In opinion of the Circuit Court (Record, page 570) it is said:

> "The Supreme Court of the United States in Dutton and others vs. Strong, 66 U. S. 1, 32, had under consideration this precise question, as to when piers, landing places and wharves were private, or became public wharves; although the property in such wharves remained in the individual owner; and in apt language said: 'and whether they are the one or the other may depend in case of dispute, upon several considerations; involving the purpose for which they were built; the uses to which they have been applied; the place where located; and the nature and character of the structure.'"

Taking the test as stated let us compare the Pensacola wharf, which this Court held was a private wharf, with the wharves on the Rappahannock, which the lower Courts decided were *irrevocably* public.

(*a*) The Pensacola wharf was *built* "for the purpose of providing facilities for the transaction of its business *with such vessels as it might permit* to come to and lie at said wharf to take cargo" (page 485, 198 U. S.). The Rappahannock wharves were built for the purpose of affording the plaintiff's steamers landing places, to take on or discharge passengers and freight handled by it in the conduct of its business as a common carrier.

(*b*) The Pensacola wharf was *used* by the railroad company, its owner, to transfer freight from rail to water and its use was limited, "to traffic handled by vessels in regular lines running in connection with the Louisville and Nashville Railroad and vessels belonging to or consigned to Gulf Transit Company (an agency of the railroad) and also to traffic in connection with vessels other than those referred to 'subject to special arrangement'" (page 485, 198 U. S.).

The Rappahannock wharves were never used by any vessels except the plaintiff's, with the exception of an occasional sail vessel. The plaintiff and certain of the other wharf owners allowed an occasional sail vessel to land at their wharves under special circumstances, as a matter of courtesy, and without charge, while others of the wharf owners permitted the occasional use of their properties by sail vessels, under special arrangements, for a stipulated compensation. The wharves in controversy were used by the plaintiff in conducting its business as a common carrier.

(*c*) The Pensacola wharf was located on a bay, near a large port, and built on what might be the extension of a public street.

The Rappahannock wharves were built on properties owned in fee by the respective wharf owners, and extended out from the banks of a navigable stream. In certain cases they were erected from and on large farms in the open country, which had large river fronts and which extended back from the river

for considerable distances. To some of them public roads were opened but in no case until after the wharves had been in use some time.

(*d*) The nature and character of structure of the Pensacola wharf was not referred to in the case quoted, so the consideration of these elements did not affect the determination of the character of the wharf.

The Rappahannock wharves were constructed on piles and built of timber and consisted of a pier head, at which the vessels landed, and upon which a warehouse for the storage of freight was built and a runway leading from the shore to the pier head.

We submit that as the Pensacola wharf was decided to be a private wharf the Rappahannock wharves, in question, must be so regarded, giving weight to the considerations mentioned in Dutton vs. Strong, and particularly in view of the fact that the latter were subjected to a much more limited use than the former; were located on strictly private property, and of the further consideration that the West Coast Naval Stores Company was not in as direct competition with the railroad company as the defendants in this case were with the plaintiff.

It will be seen from the above quotations of the Court's opinion in the Louisville and Nashville Railroad Company Case (198 U. S. 483), that it is decided therein that the fact that a wharf is built on the extension of a public street does not make such a wharf public, or limit the owner's power of the regulation thereof provided proper municipal or State authority was obtained. Accordingly it follows that in the case at bar the fact that public roads were opened to certain of these wharves, after their construction, does not modify the character of the same.

Exterkamp vs. Covington Harbor Co., 104 Ky. 796.

Brisbine vs. St. Paul Railway Co., 23 Minn. 114, 129-130.

California Nav. Co. vs. Union Co., 126 Cal. 433.

Even if the wharves had been so located that the public authorites might have objected to the maintenance of the same that of itself would have furnished no authority or justification to the defendants to use the wharves.

Railway Co. vs. Renwick, 102 U. S. 180.

Gerrish vs. Proprietors of Union Wharf, 26 Me. 384.

Coney vs. Brunswick & Fla. Steamboat Co., 42 S. E. Rep. 498. 116 Ga. 222.

Wetmore vs. Brooklyn Gas Light Co., 42 N. Y. 384.

Throughout the opinion of the Circuit Court runs the thought that because these wharves are owned or controlled by a common carrier, that therefore, they are property subject to *indiscriminate use by the public for all purposes.* It is true that a common carrier can not discriminate between members of the public desiring to employ his services or instrumentalities for the carriage of property or persons between points, and of the class or kind as to which he holds himself out as such carrier. Thus the plaintiff could not say to A, we will transport you from Leedstown to Port Royal, and for this purpose you can use our wharves at these points and at the same time refuse this right to B, under like conditions.

If B, however, desired the use of the wharves mentioned, not to take the plaintiff's steamer but, in order to make landings with a competing steamer, he could not enforce such a use of the plaintiff's property. The question as to what extent the property of a common carrier is to be regarded as public was discussed and decided by the Court in the case of Donovan vs. Pennsylvania Company, 199 U. S. 279, in which the railroad company by its arrangement with the Parmelee Transfer Company gave to the latter Company the exclusive right of access to the Union Station in Chicago, where thirty thousand travelers daily arrived and departed, thus giving to said Company the opportunity to control to a great extent the business of

carrying passengers from the said station to other railroad stations and to hotels and to private houses, and excluded all other hackmen and cabmen from its grounds. The hackmen and cabmen thus excluded disregarded the prohibition and the railroad company obtained an injunction against them.

Mr. Justice Harlan in delivering the opinion of this Court (page 294) says:

> "Although its functions are public [speaking of railroad companies] in their nature, the company holds the legal title to the property which it has undertaken to employ in the discharge of those functions. And as incident to ownership it may use the property for the purposes of making profit for itself; such use, however, being always subject to the condition that the property must be devoted primarily to public objects, without discrimination among passengers and shippers, and not be so managed as to defeat those objects. It is required, under all circumstances, to do what may be reasonably necessary and suitable for the accommodation of passengers and shippers."

Mr. Justice Harlan is here referring to passengers and shippers over the Company's *own line of transportation and* not over that of a competitor, for he adds (italics ours):

> "But it is under no obligation to refrain from using its property to the best advantage of the public and of itself. *It is not bound to so use its property that others, having no business with it, may make profit to themselves.* Its property is to be deemed, in every legal sense, *private property as between it and those of the general public who have no occasion to use it for purposes of transportation.*"

Mr. Justice Harlan here refers to the use of the Company's property for *transportation over its own line*, and not over *a competing line*, and quotes from:

> Pittsburg, etc. Ry. Co. vs. Bingham Admx. 29 Ohio St. 364, 370, in which the Supreme Court of Ohio said that,

"'*For all purposes not connected with the operation of its road, the right of the Company to the exclusive use and enjoyment of the corporate property* is as *perfect* and *absolute* as is that of an owner of real property not burdened with public or private easements or servitudes'."

Applying these principles the Court held that the Pennsylvania Company had the right to make an arrangement with a single company to supply all vehicles necessary for passengers and to exclude all other hackmen, though licensed by the city of Chicago.

Mr. Justice Harlan further (pages 295-296) said (italics ours):

"The question of any failure of the company to properly care for the convenience of passengers was not one that, in any legal aspect, concerned the defendants as licensed hackmen and cabmen. It was not for them to vindicate the rights of passengers. They only sought to use *the property of the railroad company to make profit in the prosecution of their particular business.*"

Surely the failure, if there had been failure, on the part of the Weems Company to properly care for the convenience of the public was not one that concerned the defendants in our case, who, like the hackmen and cabmen, sought to use our wharves to make a profit for themselves to the great prejudice of the Weems Company.

Mr. Justice Harlan proceeds:

"A hackman, in no wise connected with the railroad company, cannot, of right and against the objections of the company, go upon its grounds or into its station or cars for the purpose simply of soliciting the custom of passengers; but, of course, a *passenger* upon arriving at the station, in whatever vehicle, is entitled to have such facilities for his entering the company's depot as may be necessary" (because he goes to the station to *patronize the company's line and take its train, not that of a competitor*).

Mr. Justice Harlan further says (italics ours):

> "Here the defendants press the suggestion that they are entitled to the same rights as were accorded by special arrangement to the Parmelee Transfer Company. They insist, in effect, that as carriers of passengers they are entitled to transact their business at any place which, *under the authority of law, is devoted primarily to public uses* certainly at any other place open to another carrier engaged in the same kind of business. But this contention, when applied to the present case, cannot be sustained. The railroad company was not bound to accord this particular privilege to the defendants simply because it had accorded a like privilege to the Parmelee Transfer Company; for it *had no contractual relations with the defendants, and owed them as hackmen no duty to aid them in their special calling.*"

What contractual relations, pray, did the Weems Company have with its competitor, the defendants; and what conceivable duty did the Weems Company owe the defendants to aid them *in breaking up* the trade of the Weems Company?

Mr. Justice Harlan adds:

> "The defendants did not have or profess to have any business of their own with the company."

The defendants in our case did not have, and did not profess to have, any business of its own with the Weems Company. Hence, neither the general public nor the defendants could enter upon the wharves of the Weems Company unless they had *business with that company.* The general public, no more than the defendants, could come to the wharves of the Weems Company to transact business with persons *other than the Weems Company.*

Mr. Justice Harlan says (pages 296-297) further (italics ours):

"In meeting their obligation to the public, whatever the nature of those obligations, the defendants *could use any property owned by them*, but they could not, of right, *use the property of others against their consent.* * * * The first and paramount obligation of the railroad company was, as we have already said, to consult the comfort and convenience of the public WHO USED THAT HIGHWAY. * * * But, after providing fully for the wants of passengers and shippers, it did not undertake, expressly or by implication, *to so use its property as to benefit those who had no business or connec- with it.*"

Mr. Justice Harlan in commenting on the opportunity which the arrangement between the railroad company and the transfer company gave the latter to control the immense travel in Chicago (page 297) said :

"But in a real, substantial, legal sense, that arrangement cannot be regarded as a monopoly in the odious sense of that word, nor does it involve an improper use by the railroad company of its property."

The Court held that injunction was the proper remedy in that case.

It is, therefore, clear that the wharves in question while they were open to the use of all members of the public who desired to transact business with the plaintiff as a common carrier, were not subject to any further or other use that any member of the public might desire to make of them. This decision also makes it clear that a bill in equity, for an injunction, which was the remedy sought in the case at bar, was the only proper and adequate remedy under the circumstances.

In Dutton vs. Strong, 1 Black, 1, above referred to, a suit was brought by certain vessel owners against the owners of a wharf for the loss of a vessel which had been tied to the wharf, owned by the defendants, in a storm, but which had been cut

adrift by the defendants after notice to, and refusal on, the part of the master of the vessel to cast off, and thereby had been wrecked. The question involved was whether the vessel, under the circumstances, had an implied license to tie up at the wharf. This wharf was private property, and although its owners, who were forwarding merchants and sometimes moored vessels which came there upon their own business, to its timbers, it did not appear that it ever suffered anybody else to do so, or that any other person claimed the right. This Court held that the wharf owners were not liable, as the vessel had no business to transact with them and all pretense of a license to use the wharf had utterly failed.

In the case just cited the liability *vel non* of the wharf owner depended on whether the vessel had an implied license to use the wharf, and in order to see its application to the case at bar let us suppose that after the repeated warnings which were given by the plaintiff to the defendant in this case not to land their steamboat Tourist at the plaintiff's wharves, the plaintiff had taken the law into its own hands, and had, at a time when the Tourist was laying at one of its wharves, cut the lines fastening her thereto, and she had been thereby lost; could the plaintiff have been made to pay for the damage thus done? Would not the defense that the steamer was there without any implied license and not for the purpose of transacting business with the Weems Company and against its repeated warnings and protests, have been held under the authority of Dutton vs. Strong an absolute and complete answer to the assertion of any liability for the loss of the steamer?

The effect of the decision in the case of the Oregon Short Line Company vs. Ilwaco Railway and Navigation Company, 51 Fed. Rep. 465, which was relied on by the Circuit Court in its opinion in this case was to allow a competing company to use the wharf of its rival, but this decision was overruled on appeal by the Circuit Court of Appeals, for the Ninth Circuit—Mr. Justice McKenna delivering the opinion of the Court. In

the case which, on appeal, is reported in 57 Fed. Rep. 673, the facts were:

The Ilwaco Navigation Company owned a wharf on the Columbia river, near the town of Ilwaco, and another wharf at Astoria, on a river in the State of Oregon, and owned and operated a line of steamboats between these two points.

This Company subsequently built a railroad from Ilwaco to a point on the navigable waters of Shoal Water Bay, and transported on its steamboats the traffic over that railroad.

The Oregon Short Line also operated a line of steamboats from same point, carrying passengers to sea shore resorts on the Pacific not far from Ilwaco, and during the years 1888, 1889, 1890 and 1891, the Ilwaco Company allowed the Short Line Company for compensation to land its passengers at the Ilwaco wharf, from which point they were transported in wagons to the seashore resorts.

After 1891 the Ilwaco Company forbid the Short Line Company to further use its wharf for landing passengers, and the Short Line Company brought suit alleging that the Ilwaco Company was discriminating against it in violation of the Interstate Commerce Act by refusing to allow it to use the wharf.

The Court found as facts that—

> "The defendants discovered that it was *injuring* its business (the use of its wharves by the Short Line Company); that the *defendant was able to accommodate all the travel;* that there *was but one landing place, and when the plaintiff's boats were there the defendant could not land its freight and passengers,* except across the plaintiff's boats; that the wharf was at the end of trestle running out from the shore of Columbia river thereto, on which trestle was also a wagon road for teams and foot passengers.

The Court distinguished the case from the case of Indian River Steamboat Company vs. East Coast Transfer Company, 10 S. E. Rep. 485, which was also relied on in the opinion

filed in the case at bar, and disapproved it so far as it was not governed by the Florida statute; and in reversing the Circuit Court, said:

> "The contention of complainant is not that defendant's facilities are inadequate, but that it is excluded from them. *The exclusion, however, only consists in the prevention of the landing of its boats at defendant's wharf.*"

The Court, as if to indicate that the bare statement of the case was enough to refute the plaintiff's pretension, adds:

> "We have probably said enough to indicate our views of this, *but we may add that the wharf does not seem to be a public station.*"

And yet the public were using this wharf for freight and passenger traffic, and for four continuous years the plaintiff's boats brought and took away from it passengers, paying toll for the use of defendant's wharf. The Court said the defendant withdrew the license to use its wharf because it found *that the competition of the Short Line was injuring its own business*—a most logical reason and one which the law nowhere disapproves, certainly not in a country with our Constitutions, Federal and State.

The fundamental error with pervades all of the reasoning of the lower Court in our case grows out of a misconception, in our judgment, of the sound principle announced by the Court in Munn vs. Illinois; that principle is: that when an individual or a corporation devotes his property to a public use, the State, through its *Legislature, may regulate that use to the extent of protecting the public,* using such property, against unreasonable charges for the service rendered and against discrimination between one person and another, *but it all relates to the services rendered by the person or corporation thus regulated,* and there is *no hint* in that case that the right to regulate property devoted to a public use goes any further *or embraces the power in the*

State to compel one corporation or person devoting his property to a public use to permit the use of its property by another corporation not having any business or contract relation with the person whose property they seek to use and that use most detrimental, and it may be destructive, to the business interests of such other party.

This Court decided in Munn vs. Illinois that the State had the right to regulate the charges which the warehousemen should receive *in his own business; not that he should turn over any part of his warehouse for the use of a competitor in the warehouse business or share such warehouse with such competitor*, which would not be regulation of the warehouseman's *own business*, but the confiscation of his property for the benefit of those who had no possible claim on him.

The business of the Weems Steamboat Company was the transportation of passengers and freight from and between Baltimore and Fredericksburg, and all points along the Rappahannock river, *and for the conduct of this business wharves were an indispensable incident*, as much so as the stations along the line of a railroad. The Weems Company is not a wharfinger in any proper sense of that word. It occupies the same position towards its wharves which a railroad company occupies towards its stations, along its line, which it does not hold out for any other use except to enable the public *to use its line of railroad*, and not to enable any body to use them for the purpose of taking passengers upon some *competing railroad*, in close vicinity to the station of the railroad company owning the station. The Legislature of Virginia, or now its corporation commission, could intervene to regulate the charges, made by the Weems Line for *transportation on its own boats*, and to prevent discrimination as to passengers and freight *intended for the Weems Line*, but the Courts have no jurisdiction, except by way of appeal, even in this matter. But neither the Legislature or the Courts can compel the owners of the wharves on the Rappahannock to devote them to the public use any further

than said owners see fit, without taking said wharves from their owners by condemnation, and making adequate compensation.

The defendants in our case are not complaining of the denial by the Weems Company of their or the public's rights, to go upon the Weems Company's wharves for the purpose of taking passage upon or shipping freight by the *Weems Company's steamboats;* but that the Weems Company denies it the right to use its wharves, to enable the public to take passage upon, or ship freight by *another line of steamboats wholly independent of the Weems line, and running in avowed opposition to it,* and using, as the proof shows, every influence to induce the traveling public to *shun the Weems line* and patronize *exclusively* its competitor. In other words, that any tramp steamer has the right to use the wharves of the Weems Company, built exclusively for that Company's own boats, in order to reduce or destroy the traffic of the Weems Company, as long as such tramp steamboat operated at small expense can hold out.

The learned Judge of the Circuit Court suggests what he deems a simple and adequate remedy for this invasion of the plain rights of the Weems Company, viz:

> "The owners of wharves have a complete remedy within their own hands, if in point of fact they be private as distinguished from public wharves. *They have the right to withdraw the use of their wharves entirely from the public,* but they can not allow the latter to use the wharves, or *use them themselves in their business as public carriers* for the public, and discriminate between them in their use * * *."

Now, since all the wharves in controversy were built, as the testimony without any conflict shows, for the use of the Weems Company; and since it is further established by all the evidence taken before the Special Master that all traffic over said wharves *was exclusively confined to steamboats of the Weems line,* until the advent of the Tourist, with the rare exception of some farmer being allowed to ship grain or coal by special permit,

the above language quoted from the opinion of the Court means that the only method by which the Weems Company can divest its wharves of their character as public wharves, *is to exclude all the public from access to said wharves*, even for the exclusive purpose of patronizing the Weems Steamboats, in other words, shut up shop, since without wharves, the Weems Company must withdraw their steamboats from the Rappahannock river, and surrender the trade which the Company has built up by years of hard work.

Other cases which hold that a wharf owner can prevent persons from using his wharf for purposes of their own are:

Coney vs. Brunswick, etc., St. Co. 42 S. E. Rep. 498, 116 Ga. 222.

Mills & Allen vs. Evans, 100 Iowa, 712.

See also—Bogert vs. Haight, 20 Barb. 251.

The opinion of the Circuit Court complained of herein disregards the principles of the cases which hold that a common carrier has the right to select its agencies for conducting its business and to decline to allow other carriers the use of its terminal facilities.

Atchison Topeka & Santa Fe R. R. Co. vs. Denver & New Orleans R. R. Co., 110 U. S. 667.

Express Cases, 117 U. S. 1.

If a common carrier can select its own agencies and deny to other carriers the use of its terminals it would seem to follow that such a carrier would have the right to refuse other competing carriers the use of its property for the purpose of competition.

The learned Judge of the Circuit Court differentiated wharves in the cities from wharves located in the country, but we submit that no such distinction is found among the authorities or can be justified on reason. Property-rights enjoy the same guarantee of protection no matter where the property is situated. The property-right in each of these comparatively small

wharves, situated on the banks of a quiet Virginia river, is just as much to be guaranteed against invasion and confiscation as similar rights in the most valuable terminal facilities located in our busiest port.

The hardship of the possible inability of the people living back from the waters to reach the same for the purpose of communication or transportation would obviously be much greater in an important commercial port than in the open country, and the probability of such a condition, much more to be apprehended in a port where land is restricted in area, high in value and tightly held, than on the Rappahannock river with its two hundred and fifty miles of river front devoted almost exclusively to agriculture.

Even if the condition which, in our judgment, the facts show to be impossible of creation or existence did exist and as a matter of fact the plaintiff owned the only places of outlet or access from the back country to the river and by reason thereof no practical use could be made of the river except with the consent of the plaintiff, such a public necessity would not justify the taking of private property without due process of law. The remedy for such a condition would be simple, namely, the exercise of the sovereign power of eminent domain.

That the right of the riparian owner to wharf out his property is established, see—

Yates vs. Milwaukee, 10 Wall. 497.
Webber vs. Board of Harbor Commissioners, 18 Wall. 57.
Norfolk City vs. Cooke, 27 Gratt. 430, 435.
Railway Co. vs. Faunce, 31 Gratt. 761, 765.

Our next proposition is that a wharf owner, who may have allowed his property to become a public wharf, by permitting the public indiscriminately to use it, can by proper and reasonable notice to the public of his intention to restrict its use convert a public wharf into a private one.

There can be no doubt that the owners of a public wharf may by suffering his property to fall into such a state of disrepair, as to make it unfit for use, withdraw it from public use. So too he can tear up or destroy his property and accomplish the same result.

There is no law (common or statute) in Virginia which requires a wharf owner to keep his wharf in repair (he, of course, may under certain circumstances be liable for injuries done to persons or property by reason of its bad condition) or which forbids him from destroying his wharf.

If this is so then the wharf owner must have the right to regulate the use of his property, for the power to destroy includes, of necessity, the power to regulate.

The State of Virginia, when it conferred upon the riparian owners the right to wharf out into navigable waters, might have annexed, as a condition to the exercise of the right conferred, an obligation on the part of the riparian owner to forever permit the use of his wharf by others, or to assume and to forever perform the duties of a wharfinger, but this was not done, as will be seen from the statute on the subject which is as follows—Code of Virginia of 1887, Section 998:

> "Any person owning land upon a water course may erect a wharf upon the same, or pier or bulkhead in such water course opposite his land, provided the navigation be not obstructed, nor the private rights of any person be otherwise injured thereby. But the Court of the county in which said wharf, pier or bulkhead is, after causing ten days' notice to be given to the owner thereof of its intention to consider the subject, if it is satisfied that such wharf, pier or bulkhead, obstruct the navigation of the water course, or so encroaches on any public landing as to prevent the free use thereof, may abate the same."

Therefore we repeat that no one could have prevented the plaintiff from destroying the wharves owned by it, and *a fortiori*, it must have the right to restrict the use of its wharves.

In the case at bar the defendants were warned, in the latter part of November or the early part of December, 1902, not to use the plaintiff's wharves, but continued to use each of the same regularly six times every week before as well as after the bill of complaint was filed in the case, which was in April, 1903.

For the purposes of the argument let us admit that the owners of the wharves in controversy had always allowed all vessels to use their wharves indiscriminately and thereby their wharves had become public. Let us even admit that the permission had been extended to the defendant's steamer. Under such circumstances these wharves would be considered public wharves, because every one desiring to use the same had by express permission, or the conduct of the wharf owner the license, express or implied, to use the same. The rights of the public would thus depend upon the existence of the license. Withdraw the license and the public character of the wharf is destroyed. The only limitation on the owner's authority is that the license, express or implied, cannot be withdrawn summarily and without proper notice and the intended patrons thereupon treated as trespassers. The defendants had at least four months' warning and notice to desist from landing at the wharves, and the law would certainly regard such a notice as ample, particularly when it is taken into consideration that the defendants do not rely on the insufficiency or unreasonableness of the notice but upon a claim of right, which they assert no notice, or in fact a ction on the part of the wharf owner, can impair or affect. Accordingly even in the supposed case the defendants could not have lawfully continued the use of these wharves.

That a wharf owner may revoke a license to use his property is settled in the following cases:

Railroad Company vs. Hanning, 15 Wall. 649.

Ilwaco, etc. Co. vs. Oregon Short Line, 57 Fed. Rep. 673.

Coney vs. Brunswick, etc. Steamboat Co., 42 S. E. Rep. 498, 116 Ga. 222.
Bogert vs. Haight, 20 Barb. 251.
Heaney vs. Heaney, 2 Denio, 625.
Swords vs. Edgar, 59 N. Y. 28, 31-32.
Compare—O'Neill vs. Arnett, 27 N. J. L. 290.
See also—Encyclopedia, First Edition, vol. 29, page 64.

Farnham on Waters and Water Rights, vol. 1, page 562, on this question says:

> "The owner [of a wharf] may allow persons to use it as a matter of accommodation without losing his control over it, and the fact that he has done so will not prevent his terminating the license at any time, either as to the public generally or as to any particular person; and in case his business is made to suffer, by the attempted use of the wharf by others without his consent, equity may afford him relief, if there is no adequate remedy at law."

We therefore contend that upon the authorities, as well as upon reason, a wharf made public by a permissive user thereof by the public can be converted, by the owner, into a private wharf upon, and after a reasonable notice to the public to discontinue the using of the same. Accordingly in no aspect of the case did the defendants have the right to use the wharves owned or controlled by the plaintiff, and the relief prayed for in the bill of complaint filed in this case should have been granted.

In our petition for a *writ of certiorari* we have cited certain cases decided by other Federal Courts with which the decision in this case conflicts, and we will not, therefore, repeat the citation of them in this brief.

In conclusion, we desire to call the Court's attention to the importance of the decision and its far-reaching effect upon a very large class of valuable property. Without exaggeration, we can say that the number of wharves in like surroundings,

and used and built for like purposes as the wharves under consideration, runs up into the thousands, and represents a very considerable investment of capital. A large number of these wharves are located in the Fourth Circuit, which includes in its territory the Chesapeake bay and its tributaries (which, it is said, have a shore line equal in distance to the shore line of the United States, on the Atlantic, from the northernmost point in Maine to the southernmost point in Florida), and the many rivers and sounds of the Carolinas, and upon these wharves the decision in this case is absolutely binding as a rule of property. Therefore, if any one desires equal use with the owner of any wharf located in the Circuit, for the purpose of competing in the transportation business with such owner, with an unfair advantage in his favor, he has simply to incorporate under the laws of a State which would create the necessary diversity of citizenship and then commence operations. Such operations would be absolutely protected by the decision complained of. Under the decision the boat actually in the possession of the wharf has the better right to its use, no matter whether the boat is owned by the company competing with the owner of the wharf or not. It will be impossible to run regular schedules when the various wharves, to be stopped at, may be occupied by other boats. Sail vessels, at best slow and hard to handle, may tie up at any wharf and the owner's boat would either have to wait until the sail vessel is moved out, if its master is obliging, or else omit the wharf altogether, having no right to order away from the wharf the boat then in possession, and no means of knowing with any certainty the length of time the wharf will be occupied. This condition cannot be obviated by providing an additional berth or space for one more vessel at each wharf, for under the decision all have equal rights and it can not be assumed that only one vessel, in addition to the owner's, will require and take wharf room. Again, the usual construction of such wharves includes a warehouse, or some structure, to protect freight from the weather, and if strangers are entitled to the

use of the wharves they would be within their rights if they demanded the use of the warehouses, which have been built of a size sufficient for the needs of the owner only.

Under such conditions the first comer would have the right to fill up the warehouse with the freight carried by it and let the freight brought on the next vessel, notwithstanding it might be operated by the owner of the wharf, be left without shelter.

Such conditions impair the value of the wharf property and seriously interfere with the conduct of their business by common carriers operating by water.

The interests of the travelling and shipping public are also injuriously affected, for promptness and efficiency is more important to them than to the carrier.

To put it briefly, the decision holds that no common carrier can maintain or control a wharf outside of towns or cities which at all times will be subject to the demands and exigencies of his business alone, but he must share it with every one, while as a matter of fact transportation by water cannot be carried on to the advantage or convenience of the public, or of the carrier without wharves subject absolutely to the control of such carrier.

The importance of this decision must be apparent without further comment.

For the aforegoing reasons we respectfully submit that the *writ of certiori* prayed for should issue, and that the judgment herein complained of be reviewed and reversed.

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9

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. ~~135~~ 181

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, PETITIONER,

vs.

PEOPLE'S STEAMBOAT COMPANY ET AL.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

WM. D. CARTER,
ELLERBE W. CARTER,
Counsel for Respondent.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 28168

(20,858.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 455.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, PETITIONER,

vs.

PEOPLE'S STEAMBOAT COMPANY ET AL.

To the Honorable the Justices of the Supreme Court of the United States:

The respondents most respectfully submit that there is no error in the ruling of the honorable the Circuit Court of the United States for the Eastern District of Virginia and the United States Circuit Court of Appeals for the Fourth Circuit, which is sought to be reversed by the petitioner.

BRIEF FOR RESPONDENTS.

To the somewhat partial, not to say misleading, statement of the facts of this case, as set forth by counsel for the petitioner in the first pages of their brief, the record of the evidence in the cause is perhaps the most appropriate, as it must of necessity be the most conclusive, answer.

From colonial days vessels have navigated the Rappahannock river, and water transportation has been carried on upon it. Incident to such transportation, for two cen-

turies, perhaps, wharves have existed along the shores of the Rappahannock. Some of these ancient wharves occupied the locations or approximate locations of wharves in controversy here. The wharves at Port Royal and Tappahannock are two of the oldest. They are now claimed by the petitioner as private property, and the title asserted by the petitioner, to these as well as to the other wharves, gives it, if the claims of the Weems Steamboat Company can be sustained, as absolute a title and control as a householder may have to his dwelling and messuage when he is owner in fee thereof.

In the light of the testimony given by witnesses who appeared for the plaintiff, we feel justified in asserting that the statement made by counsel for the petitioner on page 2 of their brief, to the effect that "it was necessary to purchase sites and build therefrom wharves, or to acquire, by lease or purchase, wharves then in existence, which have been renewed from time to time," is inaccurate.

The evidence of R. L. Ware, of B. L. Farinholt, of Judge A. B. Evans, and others who testified for the plaintiff, to say nothing of the respondents' witnesses, negatives this assumption on the part of the petitioner's counsel.

On the contrary, it sufficiently appears that some of the wharves antedated by many years the line of steamboats; were owned by the public or by individuals along the river, and were used by the steamers from the time they began to run, wharfage being paid to the wharf-owners for the privilege of stopping the boats at the wharves to load and discharge freight and passengers.

From this state of facts it conclusively appears, we respectfully submit, that the further assumption of counsel for the petitioner, that "the wharves were built for the use of the plaintiff and its predecessors" (Petitioner's Brief, p. 8, paragraph second, end), is illogical and is neither supported by evidence nor in accordance with the facts.

For testimony in point we respectfully cite the statement

of R. L. Ware, a witness introduced by the plaintiff (petitioner), who said, in answer to a question propounded him by counsel for the petitioner (Record, p. 199), that he built Ware's wharf not only for the Weems Line boats, but to benefit himself and the community—himself by the collection of wharfage; the community by providing the public with a convenience for shipping, the use of which the public obtained by paying for the accommodation.

To the same effect are the statements of T. D. Marks (Record, p. 177) and B. L. Farinholt (Record, pp. 158, 159, 160); and these are witnesses introduced by the plaintiff.

On cross-examination Mr. Ware (Record, p. 200) states that he would have built the wharf for any steamers that plied the river and whose owners would agree to make his wharf a landing place, and he states further that he had a regular scale of wharfage charges applicable to sailing vessels.

It may be conceded that the steamers carried a very much larger proportion of the total freight on the Rappahannock than the sailing vessels. Whether this is so or not (and it may well be questioned, because when a sailing vessel landed it generally took on or discharged a cargo, as indicated by the statements of Mr. Williams, B. L. Farinholt, Askins, and others, and conceded by counsel for petitioner (Brief for Petitioner, p. 17), while the steamers handled the lighter traffic, parcel shipments, and perishable stuff, for which more certain and speedy carriage was necessary), it is not to be questioned that, until the appearance of steam competition on the Rappahannock, other vessels than those of the petitioner or its predecessors freely used every wharf along the river, with the possible exception of three or four of those wharves claimed now by the petitioner in fee. We say freely used, meaning that the vessels used the wharves without question or controversy, paying the wharfage

charges laid by the managers of the wharves at which they laded or discharged cargo.

With the advent of a competing steamer, the record discloses an attempt on the part of the petitioner to prevent the navigation of the Rappahannock by any craft engaged in commerce except its own, unless such craft should be propelled by wind and sails. The petitioner then demanded of the owners of the various wharves what counsel has been pleased to denominate "exclusive leases." These instruments in writing purport to make an illegal contract, in that they in terms discriminate between vessels propelled by steam and those propelled by sail. Any vessel is useless if it must remain continually away from port and may not come to land from time to time, as its employment requires, to take on and discharge cargo. But these exclusive leases provide in terms that while sailing vessels may land at the wharves, no steam vessels except those of the petitioner may so land. Such discrimination is unlawful.

United States Compiled Statutes, 1901, p. 2903.

Gibbon *vs.* Ogden, 9 Wheat., at p. 221.

> "This act" [an act for the enrolling and licensing of steamboats] "demonstrates the opinion of Congress, that steamboats may be enrolled and licensed in common with vessels using sails. They are, of course, entitled to the same privileges, and can no more be restrained from navigating waters, and entering ports which are free to such vessels, than if they were wafted on their voyage by the winds, instead of being propelled by the agency of fire. The one element may be as legitimately used as the other, for every commercial purpose authorized by the laws of the Union; and the act of a State inhibiting *the use of either* to any vessel having a license under the act of Congress, comes, we think, in direct collision with that act."

To now allow such a contract is to exclude from the practical navigation of the Rappahannock every vessel propelled by steam except those owned by the petitioner.

Can the petitioner, by indirect methods, do what this court in the case of Gibbon *vs.* Ogden forbade, though in that instance the river was the Hudson and the attempted monopoly was supported by the act of the legislature of the State of New York and approved by a solemn decision of the highest appellate court of that great Commonwealth?

Gibbon *vs.* Ogden, 9 Wheat., at p. 221.

In deciding the "Kate Treminia" case (5 Bend, 62 Fed. cases #7622) the court said:

> "A wharf is a necessity of modern navigation and of navigation alone. The sole object of its erection is to facilitate the transportation of passengers and freight *upon navigable waters.*" * * * "Every vessel has a license to use, for her safety or convenience, any public wharf on navigable waters, upon paying reasonable wharfage." * * * "We think that in determining the character of the appellant's wharf regard should be had *to the use to which it has been devoted,* rather than its private ownership."
>
> Barrington *vs.* Commercial Dock Company, 33 L. R. S., 116.

"To hold a contrary doctrine," the court says in the case last cited, "would tend to promote monopolies, which it is not the policy of our law to favor."

The statement laid down by counsel for the petitioner on page 9 of their brief, as a premise from which to argue the facts of this case, has our entire approval, because under the facts, as fixed by the evidence in the case at bar, the proposition is not applicable. The statement of counsel for the plaintiff is: "The plaintiff is not, because it is a common carrier, bound to permit competing vessels to make use of its wharves for the purpose of such competition."

While less boldly stated than in their former brief and argument, counsel for the plaintiff proceed nevertheless upon the assumption that the wharves in question are the private property of the plaintiff; that they are private property in

nowise affected by any public interest; that they are, as was stated by the chief witness for the plaintiff, Mr. Williams, as much the private property of the plaintiff as was his (the witness') dwelling his private property.

Counsel for the plaintiff forget or ignore the fact that under the common law navigable waters are public highways; that all parts of the bottom under navigable waters is affected with a public interest *ab initio*. But we respectfully submit for the respondent that the character of title to the land under all wharves, and to a private dwelling, is radically different:

> "It is a title different in character from that which the State holds in lands intended for sale. It is different from the title which the United States holds in the public lands which are open to pre-emption and sale. It is a title *held in trust* for the people of the State, that they may enjoy the navigation of the waters, carry on commerce over them and have liberty of fishing therein, freed from the obstruction or interference of private parties. The interest of the people in the navigation of waters, and in commerce over them, may be improved in various instances by the erection of wharves, docks, and piers therein, for which purpose the State may grant parcels of the submerged lands, and so long as their disposition is made for such purpose, no valid objection can be made to the grant. It is grants of parcels of lands under navigable waters that may afford foundation for wharves, piers, docks and other structures in aid of commerce and grants of parcels, which being occupied, do not substantially impair the public interest in the lands and waters remaining, that are chiefly considered and sustained in the adjudicated cases as a valid exercise of legislative power, *consistently with the trust to the public, upon which such lands are held by the State.*"
>
> Shepperd Point Land Co. *vs.* Atlantic Hotel, 44 S. E. R., 39.

It is respectfully submitted that the rights of the riparian land-owner stop at low-water mark.

Code of Virginia, Sec. 1339.

But while the absolute dominion of the riparian owner, as a holder of a title in fee to his landed possessions, when the same border upon a navigable waterway, stop at low-water mark, yet the statute of Virginia, giving legislative sanction to a principle as old as the common law, permits such a riparian owner to construct out from his shore to the navigable part of the stream or waterway a wharf structure; and counsel for the plaintiff forget or ignore the fact that all of the wharves in controversy were built under the legal privilege pertaining to the riparian ownership, and not under any power, privilege, or franchise pertaining to the Weems Steamboat Company because it was a common carrier. Therefore we concur very readily in the proposition quoted by us from the brief of plaintiff's counsel.

Counsel for the plaintiff quote with approval, and seem to rely upon, the case of Dutton *vs.* Strong, 1 Black, 33. They misstate the effect of the testimony, as shown by the record in this cause, when they insist "that all the wharves in controversy were built for the plaintiff or its predecessors."

We respectfully submit that all the wharves in controversy were built as "aids to commerce" and as facilities to enable the public generally to ship the products of the waters of the Rappahannock river, such as fish and oysters, and the varied products of a rich agricultural country adjacent to the river whose natural highway was over its navigable waters. If our view of the effect of the testimony be correct, the first test laid down by the court in deciding Dutton *vs.* Strong, *supra,* must be answered against the contention of counsel for the plaintiff in this case. The test referred to, as stated by the court, is "the purpose for which built."

As to the second test, in the light of the evidence, the counsel for the plaintiff are equally far from meeting, and properly construing, the facts established by the evidence in the case at bar. We respectfully submit that it would be hardly possible in any case to show more fully and conclusively that the uses to which all of the wharves in ques-

tion have been put were public uses, in the broad sense of the term.

The third test declared by the court in Dutton *vs.* Strong is "the place where located." These wharves are all shown by the evidence to have been located at the positions, commercially considered, possessing the greatest strategic importance to the commerce of a great section of tidewater Virginia—a section more than one hundred miles in length and twenty to thirty miles in breadth. So advantageously chosen for commercial purposes have been these locations for wharves that public money has been spent by the local authorities in the construction and maintenance of public roads to each of said wharves, evidently not for the aggrandizement of a common carrier, not for the purpose of increasing the business of a wharf-owner, but for improving the shipping facilities of the people of the counties making the expenditure in question. And the General Government has been appealed to and induced to establish at nearly every wharf in controversy a United States post-office, and is maintaining such offices at the public expense and necessarily for the public convenience.

There are thirteen wharves in controversy in this suit. As shown by the evidence, the wharves in controversy are the larger and more important shipping points along the Rappahannock river. According to the testimony of the plaintiff's chief witness, Mr. Williams (Record, p. 228), the plaintiff has acquired, by purchase or by "exclusive license," twenty-two out of thirty wharves on this great waterway. According to the evidence, unquestioned and uncontradicted, there are at each of the points named as landings or wharves, in the record of this cause, but the one facility. People having goods to ship in or products to ship out must have access to the wharf to which they are adjacent or suffer great and palpable hardship, inconvenience, and loss in transporting their merchandise to or from another wharf much more distant and more difficult of access; for it is to

be remembered, and, we submit, will be judicially considered, that in a tidewater country there are many large estuaries, arms, bays, and creeks, which extend from either side of a great waterway like the Rappahannock up into the country on either side, making it practically impossible for inhabitants on one side of such creek, bay, or arm to go by land with teams or merchandise of any kind to a wharf or landing on the river which can only be approached by land from the other side of some such creek, arm, or inlet of the river.

Again, each of the wharves in controversy, we respectfully submit, is shown by the evidence to have been built by a riparian owner for public service in order that the proprietor might make a profit out of the toll or wharfage charged against the public. These owners, in some instances at least, own large bodies of land with long stretches of front upon the river. J. H. Whealton says, testifying on direct examination for the plaintiff (Record, p. 171), that he owns two or three miles of river front. Mr. Marks, another witness for the plaintiff, testifies (Record, p. 177) that he owns, he supposes, a mile and a half of river front. Mr. R. L. Ware, another witness for the plaintiff, testifies (Record, p. 193) that his farm fronts one mile and a thousand yards—roughly speaking, a mile and a half—on the Rappahannock river. These three witnesses testify to an absolute control of some five or six miles out of two hundred miles of river front on this waterway. The situation is such that each of these riparian proprietors owning a strategic situation on their land control a far larger per cent. of the total available shore for wharfing purposes than would be represented by a comparison of their total frontage on the river with the total length of the shore-lines.

The purpose of the plaintiff in acquiring twenty-two out of the total of thirty wharves, under these circumstances, and in seeking to prevent the use of these "aids to commerce" by other steamers and vessels plying the Rappa-

hannock river is too plain for question and does not require of us comment here.

Mr. Whealton says (Record, p. 176) that there is no other wharf facility near him; that the Bay Port wharf, across the river, was three and one-half miles; to Monaskon, on the same side, but below, was four miles; to Waterview, on the opposite side and a little above, also about four miles. This statement gives at once a comprehensive view of the position of the people inhabiting the section of country back of Whealton, separated from the Rappahannock river by the land of Whealton, with a frontage, according to his own statement, of several miles on the river.

Can the public road, as a means of reaching the waterway, be closed to these people by a judicial decision that the land and wharf at the terminus of the public road is private property? In vain, in that event, was the public money spent in the construction and maintenance of the public road. The usefulness of the road is practically destroyed if it do not afford access to the navigable waters. But the witness Whealton says (Record, p. 172) that when he sold some of this property fronting on the river he "reserved the water privileges. I sold it to George W. Taylor, and I reserved the privilege *so that no other wharf* could be built there."

Mr. R. L. Ware, who testified for the plaintiff, says on cross-examination (Record, p. 195), that the nearest wharf to Ware's above or up the river is Tappahannock, and the nearest wharf below is Bowler's. He also testified that he is familiar with the river, knew it well from Naylor's down; and in answer to a question (Record, p. 196), Mr. Ware declares that "there are not many landings suitable for a wharf. They could be built, but at great expense."

It is a well-known fact, and we respectfully submit will be judicially considered as one of the characteristics of tidewater along a sandy and alluvial seaboard, that the channels in wide rivers are seldom wide for any great distance; that, out

of a total width of three to five or eight miles, only perhaps a few hundred yards in width is navigable for steam vessels on account of mud banks and sand bars, which border the channels of such waterways on one side or the other, or both. This channel of navigable water in such instances is never straight for any considerable distance, but meanders, approaching first one bank of the river, following it for perhaps a short distance, and then by some freak of nature, or law of nature, is deflected and leaves the shore, approaching perhaps to the other side for a short distance, when the next bend will be found setting off from the bar caused by some little creek, or by a bank higher than the average, indicating a firmer and more obdurate substance opposed to the action of the water. While the channel thus meanders from side to side, the total area bounded by the visible banks of the river bar exceeds the navigable portion. Above the water line on the shore, marshes occur which at high tides may be totally submerged and which for the most part are impracticable and impassable obstacles to the ordinary country roads. When encountered in the construction of a railroad, such marshes are crossed at an enormous expense, by the construction of viaducts built upon piling. The natural soil is too soft in its nature to support a road-bed or permit travel over it. Such marshes along the river are of frequent occurrence and vary in area from one or two hundred to several thousand acres. A very large per cent. of the total shore-line of the river is bordered by such marshes, palpably unsuitable for the construction of commercial wharves for the use and benefit of an agricultural people.

A consideration, we respectfully submit, of the facts shown incontestably by the evidence in the record of this cause forces the conclusion that, as to the "place where located," the finding must be that the location of every wharf in controversy in this cause proclaims that it is by its location, as it has been made by the purpose of its construction and actual use, necessarily a public facility.

As to the fourth test announced by the court in deciding Dutton *vs.* Strong, "the nature and character of the structure," points equally to their public purposes: Built of piling, a simple bridge connecting the pier-head and the shore; warehouses for the use of fishermen and oystermen and for the protection of freight, built on piling at and about the pier-head itself—an indication that these structures are of a nature and character to especially meet the general demands of the shipping public in their several localities.

So that, in the light of the facts, we respectfully submit that while the owners of the wharves along the Rappahannock river are not bound, when such wharf-owner is the plaintiff, to open its wharf to the public, yet when, because as a riparian proprietor it has built out from the shore, into the navigable waters of the river, wharf structures, and fixed the same, under sanction of the law, upon public bottom which the General Government holds in trust for the benefit of all the people, and has invited the public to do its shipping over such wharves, then the wharves are affected with a public interest far stronger than in the instances of warehouses (Munn *vs.* Illinois), and the plaintiff has no power to discriminate against any portion of the public, but must serve all who pay, or offer to pay, the reasonable wharfage charges.

We respectfully submit that there is no conflict between the opinion of the court rendered in deciding the case of Louisville and Nashville Railroad Company *vs.* West Coast Naval Stores Company, 198 U. S., 483, and the case at bar. We respectfully submit that the facts in that case are so widely different as to essentially differentiate that case from ours.

It may, we submit, well be held that even a common carrier has private business to transact, private functions to carry on. In the case of Louisville and Nashville Railroad *vs.* West Coast Naval Stores Company, the ruling of the court can readily be reconciled with the decision in Dutton

vs. Strong, *supra*. The wharf in the former case was not a place to which the railroad company invited the public. As sufficiently appears in the court's opinion in that case, the wharf was built for forwarding purposes only. Freight was not received there; neither was freight for Pensacola delivered there. The wharf was *built* for the purpose of transshipping the through freight of the railroad, which the railroad company contracted to deliver at points beyond Pensacola, and, so far as appears, it *was used* for no other purpose. The wharf was built in a city, where notoriously, being one of the world's famous harbors, there were other wharves and shipping facilities.

This disposes of three of the tests, justifying the decision in that case under the rules laid down in Dutton *vs.* Strong; and as to the character and nature of the wharf structure, as counsel for the petitioner remark (Brief, p. 19), the nature of the wharf structure was not brought in question at all; nor would it ordinarily be; for, it is respectfully submitted, that in adding that test to the other three, in the case of Dutton *vs.* Strong, the court had in mind such possible cases as might arise if a wharf built sufficiently strong for certain purposes and certain vessels were sought to be used by heavier vessels, whose impact the structure could not reasonably be expected to withstand.

In the Louisville and Nashville Railroad case the court emphasizes the fact that elsewhere in Pensacola the railroad company had its depot, at which place it offered to deliver the freight to the Naval Store Company. In the case at bar the petitioner was using wharves not built for forwarding purposes, not designed as terminals, but wharves whose use was necessarily so public that every member of the public who had shipping to do in that locality had an interest in the wharf and full license to come there for the purpose of shipping therefrom. In the case of the Pensacola wharf of the Louisville and Nashville Railroad Company, those having business upon the said wharf were by the statement

of the case limited to the employees of and special contractors with the railroad company engaged in the labor and about the business of *transshipment of through freight only*. Vessels having business at the wharf were those selected by the railroad company to carry its freight beyond Pensacola. Though the property of a common carrier, it was a private wharf. Its use as such is fully justified on the same principle and by a logical extension of the doctrine announced in reference to the coal "Staith."

King *vs.* Russell, 6 Barn. & C., 566.

And the same doctrine, it is respectfully submitted, is recognized and applied in every well-considered decision since, including Dutton *vs.* Strong, *supra*.

The opinion in the case of Louisville and Nashville Railroad Company *vs.* West Coast Naval Store Company, *supra*, does not conflict with the doctrine announced in Dutton *vs.* Strong; neither does, we respectfully submit, the decision of the honorable Circuit Court of Appeals for the Eastern District of Virginia in the case at bar conflict with the opinion of the court in deciding Dutton *vs.* Strong. The fact that while wharves may be privately owned, they may yet be of a public nature, and subject to the enjoyment of certain rights in their use by the public, is too well settled to make it necessary to follow counsel for the plaintiff in their argument as to "confiscation."

While much might be said as to the finding of the special master as to the ownership of a number of wharves in question, we submit that if it be conceded that every wharf in controversy was built by the plaintiff upon land on shore owned by the plaintiff in fee, yet under the facts of this case such wharves privately owned and built would be affected with a public interest, and in the light of the use to which all the wharves in controversy have been put, would be found and declared by the court to be public wharves. *A fortiori*, we submit, must this be the law with reference to

wharves built by individual owners from their lands into the public navigable waters and opened to the public for a toll.

Like the ferryman, like the warehouseman, like the hackman, the riparian owner who has built a wharf and takes a toll for its use from the public, whether from each individual citizen who uses his wharf at the time of such use or from the carrier who also uses his said wharf as a place to meet the members of the public who come upon it, the compensation of the owner is public toll, direct in one instance and indirect in the other, but a toll. And the offering of such service and the charge of compensation therefor creates a public interest, makes the wharf-owner as such a quasi-common carrier as to his wharf. And such common carrier, having availed himself of the privilege of a riparian owner by appropriating that portion of the public bottom covered by his wharf, must recognize the public interest in his facility and consent not to discriminate among different carriers or different members of the public who seek to use his wharf legally for hire.

And stronger yet are the rights of the public and more heavy the burden of the plaintiff in undertaking to prove its right to discriminate with reference to the use of the wharves, which (the report of the master to the contrary notwithstanding), we submit, are conclusively shown to be built out from no private property, but from public landings.

As to Carter's wharf, Bowler's wharf, and Bay Port, we respectfully submit that the evidence does not admit of question that these wharves were built from public landings.

We respectfully submit that the master is in error in finding that the wharf at Tappahannock is built from private property, and refer to the copy of the ancient plat of the town of Tappahannock, filed as Exhibit "C" with depositions for the defendant (Record, pp. 508, 509, and 510), and which shows by the original plat of the town of Tappahannock, made on parchment, certified by the clerk, that the river shore front for the distance of more than a square above, and more than a square below, the location of the

present wharf at Tappahannock was as much dedicated to the public as any of the streets of the town, which have been in constant use for three hundred years.

Nor is the finding of the master as to the title of the plaintiff to the shore from which is built the wharf at Port Royal in accordance with those rules of law which place the burden of proving their chain of title upon the plaintiff in this cause.

Counsel for the plaintiff refer to the reversal of the circuit court in the matter of Ilwago Navigation Co. *vs.* The Oregon Short Line, 57 Fed., 673. Counsel for the plaintiff quote with apparent relish the expression of the honorable Circuit Court of Appeals in that case when the court said, "We have probably said enough to indicate our views." Counsel for the plaintiff do not refer to the fact, noticed by the court in deciding that case, that the wharf was, as in the Pensacola case, "a convenience only in connecting its railroad and boats"; and in the facts in that case it appears that the wharf in question was in a "city" (if counsel for plaintiff will permit the use of the word), and that there were other wharf facilities there which were open. So that the Ilwago wharf was not a wharf in the country, but in a city. It was not a public station, to which the public generally were invited; it was a mere facility for connecting the railroad and boats of a single transportation company, and it was not the only facility of the kind at the port.

The case of the Transportation Company *vs.* Parkersburg, 107 U. S., 691, relied on by counsel for plaintiff, we respectfully submit, does not sustain the contention of the plaintiff's counsel.

The statement by counsel for the plaintiff set forth by them in a paragraph on page 12 of their brief, to the effect that "said defendants resorted to intimidation and violence in order to compel the use of the plaintiff's wharves by the 'Tourist,' a competing steamboat," rests, no doubt, upon the incident which occurred at Port Royal when the plain-

tiff, through its agent, Askins, resorted to mechanical force in attempting to illegally obstruct the public and the respondent in the enjoyment of their rights. We respectfully submit that the language of the counsel for the plaintiff is stronger than the evidence of the plaintiff's witnesses justifies, and call attention to the deposition of the plaintiff's witness to the effect that, under the orders of the plaintiff, he undertook to obstruct the public and this defendant (Record, p. 211).

The title of a railroad company to its depots, it is respectfully submitted, as well as to its road-bed or right of way, is so radically different from the title of the plaintiff to any wharf property involved in this controversy that there is no force or applicability in the reference by counsel for plaintiff to the Cab case, Donovan *vs.* Pennsylvania Company, 199 U. S., 279. The court might well say that the railroad company might contract with certain hackmen and permit its contractees to enter the cab yard of the railroad company, and that the railroad company was owner in fee of the soil. Is there any analogy by which counsel for plaintiff can successfully contend that the plaintiff might prohibit other vessels from entering the navigable waters within a given distance of one of its wharves? If so, how near to such wharf might another vessel come against the prohibition and in spite of the opposition of the wharf-owner? Would the "yard limit" of the wharf in the surrounding water extend one hundred feet from the pier-head, or one thousand? Grant that such authority over the navigable waters exists in the plaintiff, and the plaintiff may by indirect methods proceed to do what this court in the case of Gibbon *vs.* Ogden said could not be done, though attempted with the sanction of the Legislature of the great State of New York and with the approbation of the highest appellate tribunal in that great Commonwealth.

It is respectfully submitted that it is not necessary, nor profitable in this connection, to follow plaintiff's counsel in

all their references to authorities. We freely concede that a private wharf may exist and be maintained, as was said in the case of Dutton *vs.* Strong; but such private wharf in navigable waters cannot be maintained under the surrounding circumstances which the evidence shows radically affects every wharf in controversy here and stamps every such wharf with a public interest. A proprietor of a brick yard may maintain a wharf for the shipment of his product, and if it be not otherwise stamped with a public interest than by the mere fact that it extends into navigable waters, the proprietor may reserve it for his private use. It was needless for counsel for plaintiff to expend energy and quote authorities to sustain the foregoing proposition, which is cheerfully conceded.

We respectfully submit that other arguments of counsel for plaintiff are palpable fallacies. Among such we merely call attention to the argument of counsel for the plaintiff based upon the alleged failure of the legislature to fix or declare wharfage charges. As has been said by this court in the Elevator cases, the "power to declare such charge is itself a test of public interest." And as was said by Mr. Chief Justice Harlan in referring to Transportation Co. *vs.* Parkersburg, "there does not seem to be any necessity for additional legislation," the courts being clothed with jurisdiction, under the common law and by existing statutes, to protect the public interest where public rights are threatened or invaded.

The attempted argument of counsel for the plaintiff, from a practical standpoint, as to delay, is so palpably a fallacy as to need but to be mentioned to be refuted. In their own brief, counsel for plaintiff state, and it is a fact borne out by the evidence, that the river—that is, the navigable portion of the river—along which lie the wharves in controversy in this suit is more than 100 miles in length. By the testimony of the witnesses it is shown, and by statement of counsel for plaintiff in their brief they admit, that the defendant's

steamer was operating upon a schedule that brought it to each wharf in controversy six times each week.

Mr. Williams, the chief witness for the plaintiff, declares that (Record, p. 226) plaintiff put a boat on the river, after the inauguration of the schedule by the defendants, to run upon the same schedule. It is evident that under such a condition of affairs, with two boats leaving Fredericksburg, to go down the river, touching at the same landings along the river and returning the following day, leaving the lower terminus at the same hour, with a schedule calling for the same landings on the way up, at some time the boats would, in the nature of things, be attempting to make a given landing at the same time. But under the facts, we submit, there is no practical difficulty arising from this fact or contention.

In the nature of things, having a route of over 100 miles to make, neither boat would have any considerable time to spend at any wharf along the way; nor, as a matter of fact, does the evidence show that any boat ever did spend any protracted period of time at any of the wharves in controversy. The argument upon delay in this cause shows how severe has been the tax upon the ingenuity of counsel for the plaintiff in seeking to make even superficially plausible arguments to attract the attention of the court.

Equally unfortunate for them is the contention that but one boat can land or lie at one of these wharves at a time. The plaintiff's witness Wright (Record, p. 208) effectually disposes of this contention as to the wharf at Tappahannock, and from the character of the wharf structures themselves—pier-heads 60 or 70 feet square projecting out into navigable water—it is perfectly apparent that, except in times of storm or rough weather, one boat may land at one end of such pier while another boat lies at the other; or, with any consideration shown by one master for the other, one vessel or steamer may lie at the face of such a pier-head while another makes fast to one end of the same pier-head; and such occurrences are common. And even though it shoud be

status of wharves in cities, where there are other facilities available for the public, and of wharves along the open banks of a navigable river, where a little collusion permitted between a limited number of riparian owners and a single carrier may result in the commercial enslavement of the people of a whole section.

Will, it is respectfully submitted, the rights of the people to have their interests judicially protected be even partially taken away by a decision which will force upon them the alternative either to submit to oppression born of monopoly or as a people proceed to exercise the right of eminent domain and to engage in a calling more satisfactorily conducted by private enterprise, especially when restrained by law within proper bounds?

To force the public to condemn the wharves in question means not only the acquisition of the wharves, but they must thereafter be operated, managed, and maintained at the public cost and on the public's responsibility; and such duties are not likely to be imposed upon the public except in case of last resort.

Wherefore, it is respectfully submitted, there is no error in the decision of the honorable United States Circuit Court of Appeals complained of by the petitioner, and no conflict between the opinion of that court in this cause and the decisions of this court cited by counsel for the petitioner; and the respondent respectfully submits that the decree of the United States Circuit Court of Appeals for the Eastern District of Virginia should be affirmed and the writ of certiorari refused.

WM. D. CARTER,
ELLERBE W. CARTER,
Counsel for Respondent.

[redacted]

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1908,

No. 181.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY,
A Body Corporate,
Petitioner,

vs.

PEOPLES STEAMBOAT COMPANY,
WILLIAM D. CARTER, PRESIDENT, ET AL.

Brief for Weems Steamboat Company of Baltimore City.

STATEMENT.

Weems Steamboat Company of Baltimore City, a common carrier, hereinafter for convenience called the plaintiff, filed a bill in equity against the respondents, hereinafter referred to as defendants, in the Circuit Court of the United States for the Eastern District of Virginia, at Richmond, to restrain by injunction the defendants from stopping a boat, called the "Tourist," owned and operated by them, at certain wharves on the Rap-

pahannock River, owned or leased by the plaintiff, and from receiving therefrom or discharging thereon freight or passengers carried or to be carried by that steamer. The "Tourist" was being operated by the defendants in the business of a common carrier, in open and avowed competition with the steamers of the plaintiff, and continued to use the wharves in question almost daily, landing and receiving thereon and therefrom freight and passengers, notwithstanding the warnings and protests of the plaintiff against such use. Thirteen wharves were involved in the controversy, of which the plaintiff owned five, and the lots upon which they abutted, and leased the remaining eight from their respective owners, who also owned the lots from and on which their wharves were built. We will not burden this brief with a discussion of the evidence on the question of ownership, for the Special Master who took the testimony in the case found the facts to be as just stated, and so reported (see Report of Special Master, Record, pages 101-118, 439-452), and the Judge in the lower Court, whose opinion was adopted in a *per curiam* opinion of the Circuit Court of Appeals, came to the same conclusion. (See opinion of Judge Waddill, Record, page 461.) The defendants also, although in their answer they denied the existence of any property right of the plaintiff as owner or lessee in the wharves, admitted its proprietorship therein by offering to pay compensation for the use of its wharves computed at ten per cent. (10%) on the amount of business done over them by their steamer, and actually paid rental to certain of the plaintiff's lessors after the execution by them of leases to the plaintiff. This offer to the plaintiff was declined.

These wharves were built from the shore of the river out into navigable water, and were used by the plaintiff and its predecessors for many years in the operation of a line of steamers which ran from the City of Baltimore, down Chesapeake Bay, to the mouth of the Rappahannock, which is en-

tirely in the State of Virginia; thence up that river to Fredericksburg, stopping at various wharves, including the wharves herein involved. The wharves were, of course, essential to the convenient reception and discharge of freight and passengers, and were built for the plaintiff's use, either by itself or its predecessors in the ownership of the line, or by other riparian owners, for substantially the entire transportation business of the river was done by the plaintiff and its predecessors from shortly after the close of the Civil War to the advent of the "Tourist," and during that time it alone operated steamers for the carriage of freight and passengers, with the exception of two of three trips made years ago by the steamers "Eliza Hancock" and "Lady of the Lake." Sail vessels occasionally landed at the wharves owned by the plaintiff, with its consent, without compensation, and as a favor to some person desiring to ship or receive heavy freight. (Record, pages 184-185, 199.) So, also, occasionally, did sail vessels land at the wharves leased by the plaintiff, either as a matter of favor, or paying to their respective owners, in certain instances, a compensation agreed upon between the vessel owner or his representative and the wharf owner for each transaction. There is absolutely no evidence that any of the wharves were built for the purpose of allowing all comers to land thereat upon the payment of compensation, or were ever so used. The plaintiff has never charged or received one cent of wharfage for the use of the wharves owned or leased by it. The wharves were not built in harbors, but along the banks of the river at points convenient for traffic. They and the lands upon which they were built were unfenced. The plaintiff and the other owners of these wharf properties paid taxes thereon and kept the structures in repair at their own expense. The Statute of Virginia defining the rights of riparian owners to wharf out, which has been in force certainly since 1839-40,

was set forth at length in the plaintiff's bill of complaint, and is as follows:

> "Any person owning land upon a water course may erect a wharf on the same, or pier or bulkhead in such water course opposite his land, provided the navigation be not obstructed, nor the private rights of any person be otherwise injured thereby. But the court of the county in which such wharf, pier or bulkhead is, after causing ten days' notice to be given to the owner thereof of its intention to consider the subject, if it be satisfied that such wharf, pier or bulkhead obstructs the navigation of the water course, or so encroaches on any public landing as to prevent the free use thereof, may abate the same."
>
> (See Record, page 4, Code of Virginia, 1887, Section 998.)

There was no evidence that the wharves owned or leased by the plaintiff obstructed navigation or otherwise injured the private rights of anyone, and the Special Master found, as a matter of fact, that none of them encroached on a public landing. The wharves in question are opposite to and erected on the lands of their respective owners, as will be seen from plats of same (Record, pages 232, 234, 235, 236, 240), when taken in connection with the evidence, which shows that the roads appearing on the plats leading to the wharf properties are either private, or, if public, were opened by the counties after the construction of the wharves to which they lead. In certain instances the wharves were built on the river bank of large farms, and in order that they might be used, the landowner allowed access over his lands, to the end that thereby his profits from the wharf might be increased. In other cases the county authorities condemned the easement of the roads over the property of the wharf owner, without attempting or intending in any case to condemn the property actually occupied by the wharf structures

or the wharves or riparian rights of their owners. But in the case of every wharf the wharf structure abutted on property which was private.

Certain of the grounds for the equitable relief prayed for in the bill of complaint were stated therein (Record, pages 8-9) substantially as follows:

Because a recovery in an action of trespass could only be for compensation for injury done to the property trespassed on to wit, to the physical structure of the wharf, and could not cover the heavy collateral and consequential damages suffered by the plaintiff in the diversion and loss of trade by reason of the use of the plaintiff's wharves by the "Tourist" and the traveling public.

Because, if it were competent in an action at law to recover such collateral and consequential damages, it would be wholly impossible to ascertain or approximately estimate such damages since it would be impossible to establish the number of passengers or the amount and value of the freight transported by the "Tourist" to and from the plaintiff's wharves.

Because it was impossible for the plaintiff to ascertain the names and residences of those persons who trespassed on the plaintiff's wharves by passing over the same in landing from or embarking on the "Tourist" or in landing freight from or loading freight on that steamer.

Because the trespasses by the defendants and by those persons, whose names were unknown to the plaintiff, upon its wharves were continuous and being repeated every day at the plaintiff's wharves in the counties of Caroline, Westmoreland, Essex, Richmond, Lancaster and Middlesex, and it would be impossible for the plaintiff to obtain legal evidence of all such trespasses to be used in suits at law.

Because a multitude of people, by reason of the running of the "Tourist" and its forceable use of the plaintiff's wharves every day in the year, except Sunday, were trespassing upon the plain-

tiff's wharves, and each of said multitude is controverting the right of the plaintiff to the exclusive use of its wharves standing on his own claim to the free use thereof in the face of the protest of the plaintiff, and the plaintiff would therefore have to institute a great multiplicity of suits against all such trespassers.

Because numerous and continuous acts of trespass were being committed by the defendants and their further continuance boldly threatened under a claim of right, and the injury resulting from each act would be difficult, if not impossible to prove, and inconsiderable in amount compared with the expense of prosecuting actions at law to recover damages therefor.

Because the rights of the plaintiff to the exclusive use and enjoyment of all of the wharves in question and the exclusive possession thereof being established by the law of the land, the plaintiff was entitled to be quieted therein, and to be protected against the continuous trespasses thereon of the defendants and the public, and a multiplicity of suits avoided.

Preliminary and perpetual injunctions were asked to prevent the use of the wharves by the defendants. Jurisdiction was vested in the Federal Court by averment and proof of diversity of citizenship, and of the jurisdictional amount. In connection with the amount involved it was proven that the plaintiff had invested in its line of steamers on the Rappahannock and wharf properties thereon about half a million of dollars.

The defendants in their answers admit the use of the wharves, as alleged, and, contrary to the express prohibition of the plaintiff, but averred they were willing to pay reasonable compensation for such use. They denied the right of the plaintiff to exclude their steamer from the use of the wharves. They further denied the title and estate of the plaintiff in and to the wharves, even when the wharf and property upon which it is built was, as was the case of Port Royal wharf, purchased in 1866 by the predecessors of the plaintiff in the operation of the line, and thereby put upon the plaintiff the burden of proving

titles to the thirteen wharves in controversy, which was accomplished, not only by parole evidence, but by the production and proof of copies of numerous deeds and the furnishing of abstracts of title, which very considerably increased the size of the record in this case.

In the answers filed, it was, among other things, also alleged, by way of defense, that the wharves were located in the navigable waters of the Rappahannock River; that the plaintiff was a common carrier, and, therefore, unable "to discriminate as to who or what classes of the public it would enroll among its patrons" by refusing to allow members of the public desiring to patronize the plaintiff's competitor free use of its wharves for that purpose; that the wharves were the only wharves or facilities in the localities in which they were situated; that the grantors of the properties to the plaintiff were unable to give any absolute or exclusive rights to the wharves respectively for the reason that the wharves by the manner of their use had become public wharves; that public roads lead down to the shore ends of the wharves. The Circuit Court refused both the preliminary and perpetual injunctions and subsequently dismissed the bill of complaint. His reasons for this action are stated in his opinion. (Record, pages 459-464.) In the decree dismissing the bill, it is to be noted that the Court did not sustain the exceptions of the defendants to certain of the findings of fact of the Special Master; but, on the contrary, in his statement of the case, the learned Judge makes substantially the same findings of fact as did the Special Master, although he refused to concur in his conclusions of law or follow his recommendation that the plaintiff was entitled to the relief prayed. An appeal was duly taken from the decree dismissing the bill to the Circuit Court of Appeals for the Fourth Circuit, which affirmed the decree, and in a *per curiam* opinion adopted the opinion of the lower Court.

In the petition for appeal from the Circuit Court to the Circuit Court of Appeals the following Assignment of Errors was made (see Record, pages 466-467):

"1. That the Court erred in decreeing against this petitioner, the complainant in this cause, and in dismissing, with costs, its bill of complaint, which was filed on the 16th day of April, 1903.

"2. That the Court erred in sustaining the exceptions filed by the defendants to the reports of the special master in the above-entitled case, which reports were filed on the 26th day of October, 1903, and on the 10th day of November, 1903.

"3. That the Court erred in refusing to grant the injunction prayed for in the bill of complaint filed by the complainant.

"4. That the Court erred in holding that, with possibly a single exception, the wharves in question are at the termini of the public highways in the counties in which they are respectively built.

"5. That the Court erred in holding that the wharves in question are the usual shipping places of persons living in the immediate neighborhood of the wharves and the inhabitants of the country for some distance in the interior.

"6. That the Court erred in deciding that the wharves in controversy and mentioned in the bill of complaint, are public and not private wharves.

"7. That the Court erred in holding that the wharves in question are the only means whereby the people of the community can reach the Rappahannock river and use the mediums of commerce navigating the same.

"8. That the Court erred in holding that the wharves were all built that they might be used as the means, and only means, whereby the people of the community can

reach the Rappahannock river and use the mediums of commerce navigating the same.

"9. That the Court erred in holding that the wharves in question are public wharves, as distinguished from private wharves.

"10. That the Court erred in holding that the wharves were built, used and maintained for the public generally.

"11. That the Court erred in holding that the complainant could not discriminate as between the public seeking to go upon and over the wharves in question, or public carriers seeking to lawfully ply the waters of the Rappahannock river.

"12. That the Court erred in holding that the complainant could not secure a right to prevent any part of the public from using the wharves upon equal terms with the others, and that the complainant could not cut off a competitor lawfully engaged in navigation of the river, from free use of the wharves and the right to have and receive the patronage of the public lawfully using such wharves, upon making or proffering proper compensation therefor.

"13. That the Court erred in holding that the owners of wharves cannot allow the public to use the wharves or use them themselves in their business as public carriers for the public, and discriminate between them in their use."

A writ of certiorari was then duly petitioned for and granted.

Argument.

The propositions of law which we seek to maintain we will put in the form of the following statements, exactly the converse of the principles upon which, as a reading of the opinion of the Court will show, this case was decided; namely,

That the plaintiff is not, because it is a common carrier, bound to permit, upon any terms, vessels competing with its own for the same business to make use of its wharves for the purpose of such competition, and can exclude not only competitors, but all persons, from the use of its wharves, except those who have business to transact thereat with it as a common carrier.

That the fact that public roads have been built to the shore ends of certain of these wharves has no effect on their character as private wharves or the plaintiff's right to limit their use to its own patrons or other persons having business with it as a common carrier.

That the fact that nearly all these wharves are built in the open country, along the banks of the river, and not in cities or towns or harbors or places where there may be more than one landing place, makes no difference in the real character of these wharves, whether public or private.

That the law does not declare that a wharf, which is public in the sense that the owner thereof has permitted the public to use it for any purpose upon payment of compensation, shall for all time remain public, but allows the owner thereof to change the public character of such a wharf by a proper and reasonable notice.

The mere fact that property is owned by a common carrier does not make such propery subject to any and every public use. Neither does the fact that property may be used by a common carrier in its business as such subject it to any use that may be of supposed or actual benefit or advantage to the public, but the carrier fulfills its obligation if it permits the public, without discrimination, to use such property in transacting business with it as such carrier. This is well illustrated in the case of Donovan vs. Pennsylvania Company, 199 U. S. 279, in which the railroad company, by an arrangement with the Parmelee Transfer Company, gave the latter company the exclusive right of access to the Union Station in Chicago, where thirty thou-

sand travelers daily arrived and departed, thus giving the Transfer Company the opportunity to control to a great extent the business of carrying passengers from the said station to other railroad stations and to hotels and to private houses, and excluded all other hackmen and cabmen from its grounds. The hackmen and cabmen thus excluded disregarded the prohibition and the railroad company obtained an injunction against them.

Mr. Justice Harlan, in delivering the opinion of this Court (page 294), says:

> "Although its functions are public (speaking of railroad companies) in their nature, the company holds the legal title to the property which it has undertaken to employ in the discharge of those functions. And as incident to ownership it may use the property for the purposes of making profit for itself; such use, however, being always subject to the condition that the property must be devoted primarily to public objects, without discrimination among passengers and shippers, and not be so managed as to defeat those objects. It is required, under all circumstances, to do what may be reasonably necessary and suitable for the accommodation of passengers and shippers."

Mr. Justice Harlan is here referring to passengers and shippers over the company's *own line of transportation and* not over that of a competitor, for he adds (italics ours):

> "But it is under no obligation to refrain from using its property to the best advantage of the public and of itself. *It is not bound to so use its property that others, having no business with it, may make profit to themselves.* Its property is to be deemed, in every legal sense, *private property as between it and those of the general public who have no occasion to use it for purposes of transportation.*"

Mr. Justice Harlan here refers to the use of the company's property for *transportation over its own line,* and not over *a competing line,* and quotes from:

> Pittsburg, etc., Ry. Co. vs. Bingham Admx., 29 Ohio St. 364, 370,

in which the Supreme Court of Ohio said that:

> " '*For all purposes not connected with the operation of its road, the right of the company to the exclusive use and enjoyment of the corporate property* is as *perfect* and *absolute* as is that of an owner of real property not burdened with public or private easemets or servitudes.' "

Applying these principles, the Court held that the Pennsylvania Company had the right to make an arrangement with a single company to supply all vehicles necessary for passengers and to exclude all other hackmen, though licensed by the City of Chicago.

Mr. Justice Harlan further (pages 295-296) said (italics ours):

> "The question of any failure of the company to properly care for the convenience of passengers was not one that, in any legal aspect, concerned the defendants as licensed hackmen and cabmen. It was not for them to vindicate the rights of passengers. They only sought to use *the property of the railroad company to make profit in the prosecution of their particular business.*"

Surely, the failure, if there had been failure, on the part of the plaintiff to properly care for the convenience of the public was not one that concerned the defendants in our case, who, like the hackmen and cabmen, sought to use the wharves to make a profit for themselves to the great prejudice of the plaintiff.

Mr. Justice Harlan proceeds:

> "A hackman, in no wise connected with the railroad company, cannot, of right and against the objections of the company, go upon its grounds or into its station or cars for the purpose simply of soliciting the custom of passengers; but, of course, *a passenger* upon arriving at the station, in whatever vehicle, is entitled to have such facilities for his entering the company's depot as may be necessary" (because he goes to the station to *patronize the company's line and take its train, not that of a competitor*).

Mr. Justice Harlan further says (italics ours):

> "Here the defendants press the suggestion that they are entitled to the same rights as were accorded by special arrangement to the Parmelee Transfer Company. They insist, in effect, that as carriers of passengers they are entitled to transact their business at any place which, *under the authority of law, is devoted primarily to public uses* certainly at any place open to another carrier engaged in the same kind of business. But this contention, when applied to the present case, cannot be sustained. The railroad company was not bound to accord this particular privilege to the defendants simply because it had accorded a like privilege to the Parmelee Transfer Company; for it *had no contractual relations with the defendants, and owed them as hackmen no duty to aid them in their special calling.*"

What contractual relations, pray, did the plaintiff have with its competitor, the defendants; and what conceivable duty did the plaintiff owe the defendants to aid them *in breaking up* its trade?

If the railroad company was not bound to accord the hackmen the particular privilege sought, to wit, the use of its station, by

what reasoning is the plaintiff required to grant a far greater privilege to the defendants, to wit, the use of its wharves for purposes of competition?

Mr. Justice Harlan adds:

> "The defendants did not have or profess to have any business of their own with the company."

The defendants in our case did not have, and did not profess to have, any business of its own with the plaintiff. Hence, neither the general public nor the defendants could enter upon the wharves of the plaintiff unless they had *business with that company*. The general public, no more than the defendants, could come to the wharves of the plaintiff to transact business with persons *other than the plaintiff*.

Mr. Justice Harlan says (pages 296-297) further (italics ours):

> "In meeting their obligation to the public, whatever the nature of those obligations, the defendants *could use any property owned by them*, but they could not, of right, *use the property of others against their consent*. In maintaining a highway under the authority of the State the first and paramount obligation of the railroad company was, as we have already said, to consult the comfort and convenience of the public WHO USED THAT HIGHWAY. To that end it could use all suitable means that were not forbidden by law. In its discretion it could accept the aid or stipulate for the services of others. But, after providing fully for the wants of passengers and shippers, it did not undertake, expressly or by implication, *to so use its property as to benefit those who had no business or connection with it*."

The defendants, to apply the words above quoted, in the case at bar, in meeting their obligations to the public could use any property owned by them, but they could not of right use the

property of the plaintiff against its consent. Neither did the plaintiff after providing for the wants of its passengers and shippers undertake expressly or by implication to so use its property as to benefit the defendants who not only had no business or connection with it but who were actually seeking to do it injury, and demanded as a right its co-operation to that end.

An answer to the argument that the protection of the plaintiff's property rights is aiding a monopoly is found in what Mr. Justice Harlan said in regard to the same argument advanced in the case quoted from. In commenting on the opportunity which the arrangement between the railroad company and the transfer company gave the latter company to control the immense transfer business in Chicago, he says (page 297):

> "It is true that by its arrangement with the railroad company the Parmelee Company was given an opportunity to control, to a great extent, the business of carrying passengers from the Union Passenger Station to other railway stations and to hotels or private houses in Chicago. But in a real, substantial, legal sense, that arrangement cannot be regarded as a monopoly in the odious sense of that word, nor does it involve an improper use by the railroad company of its property. That arrangement is to be deemed, not unreasonably, a means devised for the convenience of passengers and of the railroad company, and as involving such use by the company of its property as is consistent with the proper performance of its public duties and its ownership of the property in question."

The cry of monopoly raised against the plaintiff in the case at bar is as just and well founded as would be such a cry if raised against the only merchant in a small village who should see fit to refuse the use of his store or any part thereof to a competing merchant just starting up and unwilling or unable to acquire with his own means a store property for his own use to carry on

therein a competing business. It is clear from the aforegoing decision that the wharf property of the plaintiff is not by virtue of the fact that it was used by it as a common carrier for its business as such, *public* for all purposes, but only public in the sense that the plaintiff could not lawfully discriminate against members of the public desiring to use its property to transact business with it as a common carrier.

It is to be noted that the case of Donovan vs. Pennsylvania Company, 199 U. S. 279, also decides that a bill in equity praying for an injunction was the proper remedy of the carrier seeking to prevent persons having no business with it as such from using its property. We therefore submit that in this case equity had jurisdiction and the proper remedy was invoked.

The right of a riparian owner to erect wharves is property.

Farnham on Waters and Water Rights, 1 Vol. Section 66, page 297, says (italics ours):

> "It thus appearing from the preceding sections that at common law the riparian owner has a right of access to the stream which cannot be destroyed *even for the improvement of navigation without making compensation to the owner*, the right should be much more fully protected in this country, where the constitutions prevent the taking of private property for public use without making compensation. And the general rule is that the rights are so protected."

Same, Section 110, pages 509-10, the author says:

> "But since the riparian owner has a right of access to the water, and to make such right available it must include a right of access to water which is deep enough to accommodate the shipping which resorts to the harbor, the harbor line cannot be fixed in such a way as to prevent the construction of wharves which will reach navigable water."

"In Yates vs. Milwaukee, 10 Wall. 497, the Supreme Court of the United States held that the city cannot, by creating a mere artificial and imaginary dock line at a distance from navigable water, and without making the channel navigable up to such line, deprive the owners of the right to avail themselves of the privilege of a navigable channel by building wharves and piers to it."

This author further says at section 112, page 523:

"As has been seen, the owner of land abutting on a water way, even though he does not own the land under the water, has a right of access to the water which cannot be cut off without making compensation to him."

The author further says at pages 533-34, section 113 b:

"The erection of wharves is for the advancement of the interests of commerce, and, therefore, for the public interest, and for the public good, and the soil between the shore and deep water is of little use except as a foundation for wharves and piers, and it therefore is for the public good that it be devoted to that purpose. This right can be utilized only by those who can obtain access to the water, and, since the only ones who can obtain such access are riparian owners, they have a right, as members of the general public, to utilize the soil for the erection of such wharves and piers for the purpose of aiding navigation as can be placed there without injury to the rights of the public. This doctrine has been very generally recognized throughout the United States. As said by Mr. Justice Harlan in Illinois vs. Illinois, C. R. Co. (33 Fed. 730), a riparian owner has the right by virtue of his ownership, to connect his shore line by artificial connections with outside navigable water, subject to such regulations—not amounting to prohibition—as the State may establish, and to the public right of navigation. * * * As said in Miller vs. Menden-

hall, (43 Minn. 95; 8 L. R. A. 89), the right of access and communication with the navigable waters, which pertains particularly to the ownership of the upland, necessarily includes the right to fill in and to build wharves and other structures in the shallow water in front of such land and below low-water mark, and the exercise of such right though subject to state regulation, can only be interfered with for public purposes; and such improvements are encouraged because they are in the general interest of navigation and commerce, and are for public, as well as private, benefit."

The author, in the note on pages 531-532, quotes approvingly King vs. Russell, 6 Barn. & C. 566, where a staith or wharf had been erected in a navigable stream for shipping coal by private individual, in which case Bailey, J., said (p. 598):

"Nor can it be a question, whether the benefit results from a private or a *public* staith; from the staith confined to the goods of a single individual, or from a public one, which any one may use. In estimating the amount of public benefit which a staith produces, the extent to which it is used may be material; but if a private individual, with his own coals keeps it in full employ, I think it equally entitled to protection, on account of the benefit it confers upon the distant market, the market to which coals are carried, whether it be public or private."

In Yates vs. Milwaukee, 10 Wall, 497, the Court (page 504) said:

"But whether the title of the owner of such a lot extends beyond the dry land or not, he is certainly entitled to the rights of a riparian proprietor whose land is bounded by a navigable stream, and among those rights are access to the navigable part of the river from the front of his lot, the right to make a landing, wharf or pier, *for his own use or for the use of the public*, subject to *such* general rules and

regulations as the legislature may see proper to impose for the protection of the rights of the public, whatever those may be. This proposition has been decided by this Court. * * *

"*This riparian right is property and is valuable,* and though it must be enjoyed in due subjection to the rights of the public, it cannot be arbitrarily or capriciously *destroyed or impaired.* It is a right of which, when once vested, the owner can only be deprived in accordance with established law, *and if necessary that it be taken for the* public good upon due compensation."

In Weber vs. The Board of Harbor Commissioners, 18 Wall, 57, the Court said (pages 64-65):

"It is unneccessary for the disposition of this case to question the doctrine that a riparian proprietor whose land is bounded by a navigable stream has the right of access to the navigable part of the stream in front of his land, and to construct a wharf or pier projecting into the stream for *his own use* or the use of others, subject to such general rules and regulations as the *Legislature* may prescribe for the protection of the public, as was held in Yates vs. Milwaukee. On the contrary, we recognize the correctness of the doctrine as stated and affirmed in that case."

The right to maintain private wharves in a navigable river was recognized again in Transportation Co. vs. Parkersburg, 107 U. S. 691, and in Illinois C. R. Co. vs. Illinois, 146 U. S. 387, 445-446, and in Dutton vs. Strong, 1 Black, 23.

The right of a riparian owner as to the erection of wharves in Virginia under statute, and the decisions of Virginia Courts, is as follows:

Code of Virginia of 1887, Section 998:

"Any person owning land upon a water course may erect a wharf on the same, or pier or bulkhead in such water

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Code of Virginia of 1887, Section 998:

"Any person owning land upon a water course may erect a wharf on the same, or pier or bulkhead in such water

course opposite his land, provided the navigation be not obstructed, nor the private rights of any person be otherwise injured thereby. But the court of the county in which said wharf, pier or bulkwhead is, after causing ten days' notice to be given to the owner thereof of its intention to consider the subject, if it be satisfied that such wharf, pier or bulkhead, obstructs the navigation of the water course, or so encroaches on any public landing as to prevent the free use thereof, may abate the same."

The Supreme Court of Appeals of Virginia declares:

"This right of the riparian owner is not a mere license or privilege, but is *property*, property in the soil, up to the line of navigability, though covered by water; for the wharf, pier or bulkhead can only be built on the soil. It is not a mere easement to pass over the water, or a privilege to use the surface, but property in the soil under the water, on which to fasten and build such structures; and for this purpose, and subject to the restriction that navigation shall not be obstructed, is as much *property* as the land above the margin of a navigable stream."

Norfolk City vs. Cooke, 27 Gratt. 430, 435.

"It has been held in numerous cases that the owner of land bounded on a navigable stream has certain riparian rights, whether his title extends to the middle of the stream or not. Among these are free access to the navigable part of the tsream, and the right to make a landing, wharf or pier for his own use, or for the use of the public. These rights are valuable and are property, and can be taken for the public good only upon due compensation made."

Railway Co. vs. Faunce, 31 Gratt. 761, 764-765.

McCready vs. Commonwealth of Virginia, 27 Gratt. 985, holds that the navigable waters and the soil under them in Vir-

ginia are the property of the State, to be controlled by the State at its own discretion.

In Hardy vs. McCullough, 23 Gratt. 251, the Supreme Court of Appeals of Virginia, at page 262, uses this language:

> "But it is further contended, that the dock is not private property at all, but that it is a part of Elizabeth River, below low water mark; and is, therefore, the property of the State and a public highway. It will be observed that this claim is not preferred by the State herself, or by anyone claiming under her by grant or otherwise. Neither the State, nor the City of Norfolk, nor the citizens of either, save the appellant alone, seem to have ever at any time set up such a pretension. On the contrary, the State, the City of Norfolk and the citizens of each, have uniformly treated them as private property, from a time whereof the memory of men now living runneth not to the contrary. As far back as October, 1705, in the 4th year of Queen Anne, it was enacted that 'if any person having a lott in town, upon the water side, will build out into the water before his own lott, for the better conveniency of landing and shipping off goods, such persons shall have the whole benefit of such building; and the land so built upon shall be reckoned as part of his own lott, and it shall entirely be his as the lott itself, without any further duty or acknowledgment.' 3 Hen. Stat. at L., page 412, ch. 42. By the same law, Norfolk was made a town. P. 415. How soon after the passage of this law the wharves referred to in the proceedings were constructed does not appear; for, as we have seen, no living witness can testify to their origin. Manifestly, however, either under the operation of this law, or some other law or custom recognized by the State, wharves and docks had been constructed in Norfolk long before the year 1801, which were recognized by the State as *private property;* for on the 20th January, 1801, an Act was passed which

recited that there were docks and wharves within the borough of Norfolk, which had or might become ruinous and dangerous to the health of the inhabitants; for the prevention whereof the 1st section of the Act provided," etc.

Apart from this decision, if the right to wharf out is property, the wharf structure erected in the exercise of that right must be property. It must not in this connection be overlooked that no use of the wharves in question could be made for the purpose of transferring passengers and freight from shore to steamer or vice versa without going upon the lots from which the wharves were projected.

The statutes of Virginia and the decisions of its Courts govern in the determination of the rights of a riparian owner in the navigable waters of that State.

Shively vs. Bowlby, 152 U. S. 1, 24-26.
Ill. Central Ry. Co. vs. Illinois, 146 U. S. 387.
St. Anthony Falls *et al.* vs. St. Paul, 168 U. S. 349.

Having shown from the decisions that a common carrier may hold property used in its business as such as property, which is to be regarded as private property, for every purpose not connected with that business, and that the right of the riparian owner to wharf out as well as any structure erected in the exercise of that right is property, and as such entitled to protection, we will now discuss the statements of law with which we prefaced this argument. These statements of what we contend is the law are, we respectfully submit, sustained by the opinion of this Court in Louisville and Nashville Railroad Company vs. West Coast Naval Stores Company, 198 U. S. 483.

In the case just cited the defendant railroad company had a wharf in the bay of Pensacola, which was used by it for shipping goods destined to other ports. It limited the use of the wharf to traffic handled by vessels in regular lines, *running in connec-*

tion with the Louisville and Nashville Railroad and vessels belonging or consigned to Gulf Transit Company, *an agency of the defendant,* and also made use of said wharf for traffic in connection with vessels, other than those above referred to, *subject to special arrangement.*

The plaintiff claimed that the wharf was a public wharf, and that it might use it to ship its freight by *other boats than those running in connection with the defendant,* which the defendant declined to permit.

The counsel for the plaintiff (p. 491) argued:

> "The wharf was operated by the Railroad Company, not as a private wharf, but for the use not only by the boats operated by it and the Gulf Transit Company, but also by all persons with whom the Railroad Company should see fit to make 'special arrangements.' That is, it appeared that the wharf was not a private, but a public wharf. It was used not only in the *private business* of the Railroad Company" (the counsel concedes here, that if used exclusively for the steamers of the Railroad Company, that would be "private business"), "but as a facility in the navigable waters of the bay of Pensacola in aid of commerce, engaged in by the Louisville and Nashville Railroad Company and by the Gulf Transit Company and by all the rest of the public. It is perfectly obvious that the course of the Company was to give to a very large portion of the public the right to use its wharf, with the result that such wharf became a facility in which the public, as a public, had become interested in such manner and to such extent as to deprive the defendant of the right to claim that it was a private wharf, in the operation of which the public were not entitled to insist that equal privileges were to be accorded to all persons requiring them in their respective businesses."

He cited in support of his contention:

Munn vs. Illinois, 94 U. S. 125.
Hale's *De Portibus Maris.*
Dutton vs. Strong, 1 Black, 33.
Barrington vs. Commercial Dock Company, 45 Pac. 748.

We thus have a repetition of the reasoning of the Circuit Court in our case, with the same authorities as those relied on by that Court cited to sustain such reasoning.

Mr. Justice Peckham, in delivering the opinion of the Court, pages 493-494 (italics ours), says:

> "Counsel for plaintiff now asserts, and we assume that the gravamen of plaintiff's complaint is, *not that the defendant would not transport plaintiff's goods or any part of them on defendant's line from the wharf in question,* 'but only that defendant would not permit plaintiff's goods to be at, from or by means of defendant's wharf loaded upon, or delivered to, the said vessels,' with the managers of which plaintiff had contracted to have its goods transported to other ports. This means of transportation, by such vessels as plaintiff should choose, is asserted by it as a right, because it contends that the wharf of the defendant (under the averment to that effect in the declaration, and not denied, in terms, in the plea, taken in connection with the facts stated in such plea, was a public wharf, *or that, at least, the defendant had devoted it to a public use.* The defendant in its plea sets up facts which it avers show that the wharf was not a public one. The plaintiff insists that the plea shows that the defendant built and used the wharf itself, and permitted a large part of the public to use it, including, at any rate, *those who were engaged in traffic handled by vessels belonging to regular lines running in connection with the defendant, and also including vessels*

belonging or consigned to the Gulf Transit Company, an agent of defendant, together with those who were using the wharf under some special arrangements between them and the defendant. All this, the plaintiff contends, amount to making the wharf *a public one,* or at least that it thereby became a *facility,* to the use of which the public, as a public, had a right on payment of reasonable compensation. If plaintiff chose to employ, for the further transportation of its goods, *the vessels, with the managers of which the defendant had some business arrangement or contract,* it is not denied that the defendant would and did permit such transportation. In this respect there is no allegation that the plaintiff did not have equal facilities with all other shippers. Defendant's plea avers that it did give to the plaintiff the same facilities for shipping its goods over defendant's wharf that it gave to any or all shippers. In brief, the facts seem to be *that the only complaint of the plaintiff is that defendant will not permit competing vessels to make use of its wharf for the purpose of such competition."*

This was the identical complaint made by the defendants in our case, and the said defendants resorted to *intimidation* and *violence* in order to compel the use of plaintiff's wharves by the "Tourist," *a competing steamboat.*

Mr. Justice Peckham, having thus clearly defined the issue between the plaintiff and the defendants, proceeds (italics ours), (pages 494-495):

"We do not see that the fact that the wharf was erected under authority from the city, at the foot of a public street of the city, makes any material difference in the character of the wharf, or that the right of the plaintiff to select its own vessels to continue from that wharf the transportation of its goods is on that ground enhanced, or the right of defendant to control the wharf for its own use when erected

is thereby diminished. The right to erect the wharf was granted by the proper authorities, and so far as the record shows, it was granted without imposing any conditions as to its use by the public. We think the plaintiff had no right of access to the wharf, founded simply upon the fact that it was erected under proper authority, in the harbor of Pensacola and at the foot of one of the public streets of that city. The question of the rights of plaintiff must really turn *upon the character of the use of the wharf*, whether it is public or private.

"The argument upon the part of the plaintiff is, in substance this: True, defendant has erected a wharf, which is not in fact intended or used as the terminus of its road at Pensacola, adequate yards and depots having been furnished by the defendant for all goods and passengers destined to Pensacola only; but the wharf has been erected to enable defendant to more conveniently carry out contracts for transportation beyond its own line, which it was not compelled to make, and which it could carry out by such agencies as it chose; but the plaintiff, having goods destined for points outside of Florida, insists upon its right to use the road of defendant, not to carry these goods to Pensacola, but to defendant's wharf, so *that plaintiff may there transfer them into vessels which it has arranged to take them; in order to do this it is necessary that defendant be compelled to share its possession of its own wharf with the managers of these other vessels; for this possession plaintiff is prepared to make reasonable compensation.* This right on the part of the plaintiff is urged as the result of the *action of defendant in permitting the use of the wharf as stated in the plea.* By such use it is contended *that the defendant in effect dedicated the wharf to the public, or at least has granted to the public an interest in the use of the wharf.*"

In this case the Louisville and Nashville Railroad Company *not only used the wharf for its own line of vessels, but also allowed its use to another extensive line, known as the Gulf Transit Company, which was an independent line, but running in the interest of and not in opposition to the owner of the wharf,* and also allowed *any other company with which it made satisfactory arrangements to use its wharf,* which was obviously a much more extensive public use than that of the plaintiff of its wharves along the banks of the Rappahannock, not handling one-thousandth part of the traffic of the wharf in the case under consideration.

Mr. Justice Peckham proceeds (italics ours) (pages 495-496):

> "We are of opinion that *the wharf was not a public one,* but that it was a mere *facility, erected by and belonging to defendant,* and used by it, in connection with that part of its road forming an extension from its regular depot and yards in Pensacola, to the wharf, for the purpose of more conveniently procuring the transportation of goods beyond its own line, and *that defendant need not share such facility with the public or with any carriers other than those it chose for the purpose of affecting such further transportation.*
>
> "Neither the public nor the plaintiff had such an interest in the wharf as would give to either the right to demand its use on payment of reasonable hire * * * The city or State authorities in granting the right to erect such facilities might, of course, have attached such conditions as they thought wise, but in their absence neither the public nor this plaintiff, as the owner of goods, would have the right on this state of facts *to go to the wharf with vessels for the purpose of continuing transportation of goods in competition with the defendant.* The defendant never became a *common carrier, as to this wharf,*

in the sense that it was bound to accord the public or to plaintiff a right to use it upon payment of compensation."

The plaintiff has never collected a cent for wharfage from any person, and never permitted any other craft, but its own, to stop at its wharves, except in isolated instances under special circumstances and for special purposes.

Mr. Justice Peckham again (pages 496-497) says:

"But plaintiff demands more than this; it demands that defendant shall carry plaintiff's goods over its rails thus laid, in order that plaintiff *may itself forward its goods by vessels of its own selection, and that defendant shall surrender possession of enough of its wharf to enable plaintiff to do so.*

"That the defendant had the right to choose its own agencies, and grant to them the exclusive privilege of access to its own wharf, which it built only for the purpose of continuing the transportation of goods which it had transported to the end of its line, has in effect been decided by this Court."

If the defendant had the right in that case to choose those that should use its wharf and grant them the exclusive privilege of access thereto, why could not the plaintiff grant the exclusive privilege of access to its wharves to those only who proposed to use *its means of transportation* and exclude therefrom those who sought to use said wharves in order to patronize a *competitor?*

Mr. Justice Peckham further (page 498) said in this case:

"The cases cited did not involve rights of parties to a wharf situated in a harbor, but we think that the right of one carrier to enter into arrangements with another carrier to forward its goods and to refuse to do so with others, or to permit such others to avail themselves of the facilities

constructed by the original carrier for that purpose, is not altered because the facility so constructed by it happens to be a wharf in the harbor of a city instead of some structure on land. The wharf may be a private one and its owner may permit those only to have access to it that it may choose. A private wharf may exist on the shores of a navigable river or lake, or in a harbor of a city from which access is obtained directly to the sea" (citing Dutton vs. Strong, 1 Black, 23, 32).

Mr. Justice Peckham quotes with approval the following language of the railroad company's counsel (p. 498) (italics ours), that:

> "*The very nature of a wharf* and its inadequacy to meet the demands of every incoming vessel necessitates *that its use should be exclusively for those with whom the carrier enters into arrangements.*"

And (pages 499-500) says:

> "The reasons for permitting such use of the wharf are manifold. Without it the commerce of the country in the large cities would be cramped, if not very greatly damaged, by the uncertainty of finding quarters for the regular and swift unloading and loading of the vessels. But the capacity of a wharf is necessarily limited, and if the wharf were open to all comers in their turn there could be no certainty as to any particular vessels being able to reach the wharf at any definite time, and consequently there would be a like uncertainty as to when such vessels would be able to depart with its load. One, unexpected, so-called, tramp vessel might, by arriving a few hours in advance, take possession of all that was left of the wharf for the purpose of loading, and thus prevent the regular steamer, arriving a little later, from coming to the dock, unloading its cargo, and then loading with goods from the railroad. In

this way there would be confusion in time, and in the possession of the wharf by the different vessels, and *its value for the purpose for which it was erected would be greatly reduced, if not wholly destroyed.*

"The principle herein recognized has also been affirmed by this Court in what are known as the *Express Co. Cases,* 117 U. S. 1, where it was held (because the facilities were necessarily limited) that railroad companies had the right to contract with particular express companies for the transportation of the traffic of the latter over the lines of their railroads, and that the railroad company was not bound to transport the traffic of *independent express companies* over its lines in the same manner in which it transported the traffic of the particular companies contracted with; in other words, that the railroad companies were not bound to furnish, in the absence of a statute, to all independent express companies, equal facilities for doing an express business upon their passenger trains."

The Court cited, with approval, Ilwaco Co. vs. Oregon Short Line, 57 Fed. 673, *infra.*

In the case of the wharves of the plaintiff, the foregoing language of Mr. Justice Peckham is peculiarly pertinent. These wharves being built, exclusively to serve its line of steamers, in a very sparely populated section of the country are naturally very restricted in their size and capacity, and if opened, as the lower Court decided they should be, to the free use of all crafts, both steam and sail vessels, their value to the plaintiff would be *practically destroyed.* for but one vessel can conveniently load and unload at any one of them at a time; hence a vesssel arriving at those wharves just ahead of the plaintiff's boat might hold the wharf in loading or unloading for twelve hours, thus depriving the owner of the wharf of its use for that trip altogether. That the wharves of the plaintiff were used by the defendants' boat so as to delay the plaintiff's boats, which

had to lie out in the stream until the defendants' boat transacted its business at said wharves, see Record, pages 409-411.

It will be noticed that the remarks of Mr. Justice Peckham as to the necessity of allowing the wharf owner to determine who shall have the privilege of using his wharf are not confined to wharves in cities, but his reasoning applies alike to all wharves that have not been expressly and intentionally dedicated to public use by the owner thereof.

We have quoted at considerable length from the opinion of this Court in the case in 198 U. S. 483, because we submit that the principles therein laid down, if applied to the uncontradicted facts of the case at bar, lead to a different conclusion from that which was arrived at by the lower Courts, and sustain the plaintiff's contentions.

It is to be observed from the above quotations of the Court's opinion in the Louisville and Nashville Railroad Company case (198 U. S. 483) that it is decided therein that the fact that a wharf is built on an extension of a public street does not make such a wharf public or limit the owner's power of the regulation thereof, provided proper municipal or state authority was obtained, and such authority was unconditional as to the use the wharf was to be put to.

Accordingly, it follows that in the case at bar the fact that public roads were opened to certain of the wharves in controversy after their construction does not alter the character of those wharves.

See also on this point—

Exterkamp vs. Covington Harbor Co., 104 Ky. 796.
Brisbine vs. St. Paul Railway Co., 23 Minn. 114, 129-130.
California Nav. Co. vs. Union Co., 126 Cal. 433.

Compare—

Irwin vs. Dixion, 9 How. 33.

Even if the wharves had been so located that the public authorities might have objected to the maintenance of the same, that of itself would have furnished no authority or justification to the defendants to use the wharves.

Railway Co. vs. Renwick, 102 U. S. 180.
Gerrish vs. Proprietors of Union Wharf, 26 Me. 384.
Coney vs. Brunswick and Florida Steamboat Co., 42 S. E. Rep. 498, 116 Ga. 222.
Wetmore vs. Brooklyn Gas Light Co., 42 N. Y. 384.

It is also to be noted that in the declaration filed by the plaintiff, in the Louisville and Nashville Railroad Co. case, it was alleged that the defendant company had permitted the plaintiff to use its wharf in the manner the plaintiff desired, but that in the midst of the prosecution of its business such permission had been withdrawn by the defendant company, and the plaintiff notified to discontinue its use of the defendant company's wharf, but this allegation of former use of the wharf was of no assistance to the plaintiff. From this we infer that the Court was of opinion that the defendant company had not disabled itself from controlling its wharf by permitting the plaintiff to use it, and that it could withdraw its permission, and after such withdrawal the plaintiff would have no right to use the wharf. In the case at bar the defendants have never used the wharves in controversy with the consent of the plaintiff, but against its oft-repeated protests and prohibitions.

The case of Dutton vs. Strong, 1 Black, 23, was referred to by Mr. Justice Peckham in deciding the Louisville and Nashville Railroad Company Case, above quoted from. In the case thus referred to a suit was brought by certain vessel owners against the owners of a wharf for the loss of a vessel which had been moored to the wharf owned by the defendants in a storm, but which had been cut adrift by the defendants after notice to, and

refusal on the part of, the master of the vessel to cast off, and thereby had been wrecked. The question involved was whether the vessel, under the circumstances, had an implied license to tie up at the wharf. This wharf was private property, and although its owners, who were forwarding merchants, had sometimes moored vessels which came there upon their own business to its timbers, it did not appear that it had ever suffered anybody else to do so or that any other person claimed the right. This Court held that the wharf owners were not liable, as the vessel had no business to transact with them and all pretense of a license to use the wharf had utterly failed.

In the case just cited the liability *vel non* of the wharf owner depended on whether the vessel had an implied license to use the wharf, and in order to see its application to the case at bar let us suppose that after the repeated warnings which were given by the plaintiff to the defendant in this case not to land their steamboat "Tourist" at the plaintiff's wharves, the plaintiff had taken the law into its own hands, and had, at a time when the "Tourist" was laying at one of its wharves, cut the lines fastening her thereto, and she had been thereby lost; could the plaintiff have been made to pay for the damage thus done? Would not the defense that the steamer was there without any implied license, and not for the purpose of transacting business with the plaintiff and against its repeated warnings and protests, have been held, under the authority of Dutton vs. Strong, an absolute and complete answer to the assertion of any liability for the loss of the steamer?

The effect of the decision in the case of the Oregon Short Line Company vs. Ilwaco Railway and Navigation Company, 51 Fed. Rep. 611, which was relied on by the Circuit Court in its opinion in this case, was to allow a competing company to use the wharf of its rival, but this decision was overruled on appeal by the Circuit Court of Appeals for the Ninth Circuit, Mr. Justice McKenna delivering the opinion of the Court. In the case, which on appeal is reported in 57 Fed. Rep. 673, the facts were:

The Ilwaco Navigation Company owned a wharf on the Columbia River, near the town of Ilwaco, and another wharf at Astoria, on a river in the State of Oregon, and owned and operated a line of steamboats between these two points.

This Company subsequently built a railroad from Ilwaco to a point on the navigable waters of Shoal Water Bay, and transported on its steamboats the traffic over that railroad.

The Oregon Short Line also operated a line of steamboats from the same point, carrying passengers to seashore resorts on the Pacific not far from Ilwaco, and during the years 1888, 1889, 1890 and 1891, the Ilwaco Company allowed the Short Line Company for compensation to land its passengers at the Ilwaco wharf, from which point they were transported in wagons to the seashore resorts.

After 1891 the Ilwaco Company forbad the Short Line Company to further use its wharf for landing passengers, and the Short Line Company brought suit, alleging that the Ilwaco Company was discriminating against it in violation of the Interstate Commerce Act by refusing to allow it to use the wharf.

The Court found as facts that, the defendants discovered that it was *injuring* its business (the use of its wharves by the Short Line Company); that the *defendant was able to accommodate all the travel;* that there *was but one landing place, and when the plaintiff's boats were there the defendant could not land its freight and passengers,* except across the plaintiff's boats; that the wharf was at the end of a trestle running out from the shore of Columbia river thereto, on which trestle was also a wagon road for teams and foot passengers.

The Court distinguished the case from the case of Indian River Steamboat Company vs. East Coast Transp. Company (Fla.), 10 So. Rep. 480, which was also relied on in the opinion filed in the case at bar, and disapproved it so far as it was not

governed by the Florida statute; and in reversing the Circuit Court said (p. 677):

> "The contention of complainant is not that defendant's facilities are inadequate, but that it is excluded from them. *The exclusion, however, only consists in the prevention of the landing of its boats at defendant's wharf.*"

The Court, as if to indicate that the bare statement of the case was enough to refute the plaintiff's pretension, adds:

> "We have probably said enough to indicate our views of this, *but we may add that the wharf does not seem to be a public station.*"

And yet the public were using this wharf for freight and passenger traffic, and for four continuous years the plaintiff's boats brought and took away from it passengers, paying toll for the use of defendant's wharf. The Court said the defendant withdrew the license to use its wharf because it found *that the competition of the Short Line was injuring its own business*—a most logical reason and one which the law nowhere disapproves, certainly not in a country with our Constitutions, Federal and State.

The fundamental error which pervades all of the reasoning of the lower Court in our case grows out of a misconception, in our judgment, of the sound principle announced by the Court in Munn vs. Illinois, 94 U. S. 113; that principle is, that when an individual or a corporation devotes his property to a public use, the State, through its *Legislature, may regulate that use to the extent of protecting the public* using such property, against unreasonable charges for the service rendered and against discrimination between one person and another, *but it all relates to the services rendered by the person or corporation thus regulated,* and there is *no hint* in that case that the right to regulate property devoted to a public use goes any further or *embraces the*

power in the State to compel one corporation or person devoting his property to a public use to permit the use of its property by another corporation not having any business or contract relation with the person whose property they seek to use, and that use most detrimental, and it may be destructive, to the business interests of such other party.

This Court decided in Munn vs. Illinois, 94 U. S. 113, that the State had the right to regulate the charges which the warehouseman should receive *in his own business, not that he should turn over any part of his warehouse for the use of a competitor in the warehouse business or share such warehouse with such competitor,* which would not be regulation of the warehouseman's *own business,* but the confiscation of his property for the benefit of those who had no possible claim on him.

The business of the plaintiff was the transportation of passengers and freight from and between Baltimore and Fredericksburg, and all points along the Rappahannock river, and for the conduct of this business wharves were an indispensable incident, as much so as stations along the line of a railroad. The plaintiff is not a wharfinger in any proper sense of that word. It occupies the same position towards its wharves which a railroad company occupies towards its stations along its line, which it does not hold out for any other use except to enable the public to use its line of railroad, and not to enable anybody to use them for the purpose of taking passengers upon some competing railroad, in close vicinity to the station of the railroad company owning the station. The Legislature of Virginia, or now its Corporation Commission, could intervene to regulate the charges made by the plaintiff for transportation on its own boats, and to prevent discrimination as to passengers and freight intended for the plaintiff's line, but the Courts have no jurisdiction, except by way of appeal, even in this matter. But neither the Legislature nor the Courts can compel the owners of the wharves on the Rappahannock to devote them to the public use any further than said own-

ers see fit, without taking said wharves from their owners by condemnation and making adequate compensation.

See—

Louisville and Nashville R. Co. vs. Interstate R. Co., 62 S. E. Rep. 369, decided by the Supreme Court of Appeals of Virginia September, 1908.

The defendants in our case are not complaining of the denial by the plaintiff of their or the public's rights to go upon the plaintiff's wharves for the purpose of taking passage upon or shipping freight by the plaintiff's steamboats; but that the plaintiff denies it the right to use its wharves to enable the public to take passage upon or ship freight by another line of steamboats wholly independent of the plaintiff's line, and running in avowed opposition to it, and using, as the proof shows, every influence to induce the traveling public to shun the plaintiff's line and patronize exclusively its competitor. In other words, that any tramp steamboat has the right to use the wharves of the plaintiff, built exclusively for that Company's own boats, in order to reduce or destroy the traffic of the plaintiff, as long as such tramp steamboat, operated at small expense, can hold out.

The learned Judge of the Circuit Court (Record, p. 463) suggests what he deems a simple and adequate remedy for this invasion of the plain rights of the plaintiff, viz:

> "The owners of wharves have a complete remedy within their own hands, if in point of fact they be private as distinguished from public wharves. They have the right to withdraw the use of their wharves entirely from the public, but they cannot allow the latter to use the wharves or use them themselves in their business as public carriers for the public, and discriminate between them in their use."

Now, since all the wharves in controversy were built, as the testimony, without any conflict, shows, for the use of the plaintiff

or its predecessors, and since it is further established by all the evidence taken before the Special Master that all traffic over said wharves was exclusively confined to steamboats of the plaintiff's line, until the advent of the "Tourist," with the rare exception of some farmer being allowed to ship grain or coal by special permit, the above language quoted from the opinion of the Court means that the only method by which the plaintiff can divest its wharves of their character as public wharves is to exclude all the public from access to said wharves, even for the exclusive purpose of patronizing the plaintiff's steamboats—in other words, shut up shop, since without wharves the plaintiff must withdraw their steamboats from the Rappahannock river and surrender the trade which the Company has built up by years of hard work.

Other cases which hold that a wharf owner can prevent persons from using his wharf for purposes of their own are:

Coney vs. Brunswick, etc., St. Co., 42 S. E. Rep. 498, 116 Ga. 222.

Mills and Allen vs. Evans, 100 Iowa, 712.

See also—

Bogert vs. Haight, 20 Barb. 251.

The opinion of the Circuit Court complained of herein disregards the principles of the cases which hold that a common carrier has the right to select its agencies for conducting its business and to decline to allow other carriers the use of its terminal facilities.

Atchison, Topeka and Santa Fe R. R. Co. vs. Denver and New Orleans R. R. Co., 110 U. S. 667.

Express Cases, 117 U. S. 1.

St. Louis Drayage Co. vs. Louisville and N. R. R., 65 Fed. Rep. 39.

If a common carrier can select its own agencies and deny to other carriers the use of its terminals, it would seem to follow that such a carrier would have the right to refuse other competing carriers the use of its property for the purpose of competition.

In this connection it is interesting to note that the Interstate Commerce Act recognizes the inherent injustice of any rule requiring a carrier to share its terminal facilities with a competitor, for Section 3 of that Act, after making it the duty of carriers to afford reasonable and proper facilities for the interchange of traffic with connecting carriers, provides: "But this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

See—

Little Rock and M. R. Co. vs. St. Louis S. W. Ry. Co., 63 Fed. Rep. 775, affirming 59 Fed. Rep. 400.

Kentucky & I. Bridge Co. vs. Louisville & N. R. R., 37 Fed. Rep. 567.

The learned Judge of the Circuit Court differentiated wharves in the cities from wharves located in the country, but we submit that no such distinction is found among the authorities or can be justified on reason. Property rights enjoy the same guarantee of protection no matter where the property is situated. The property right in each of these comparatively small wharves, situated on the banks of a quiet Virginia river, it is needless to say, is just as much to be guaranteed against invasion and confiscation as similar rights in the most valuable facilities located in our busiest port.

The hardship of the possible inability of the people living back from the waters to reach the same for the purpose of communication or transportation would obviously be much greater in an

important commercial port than in the open country, and the probability of such a condition, much more to be apprehended in a port where land is restricted in area, high in value and tightly held, than on the Rappahannock river, with its two hundred and fifty miles of river front devoted almost exclusively to agriculture.

Even if the condition which, in our judgment, the facts show to be impossible of creation or existence did exist, and as a matter of fact the plaintiff owned the only places of outlet or access from the back country to the river, and by reason thereof no practical use could be made of the river except with the consent of the plaintiff, such a public necessity would not justify the taking of private property without due process of law. The remedy for such a condition would be simple, namely, the exercise of the sovereign power of eminent domain.

Our next proposition is that a wharf owner, who may have allowed his property to become a public wharf, by permitting the public indiscriminately to use it, can by proper and reasonable notice to the public of his intention to restrict its use convert a public wharf into a private one.

There can be no doubt that the owner of a public wharf may, by suffering his property to fall into such a state of disrepair as to make it unfit for use, withdraw it from public use. So, too, he can tear up or destroy his property and accomplish the same result.

There is no law (common or statute) in Virginia which requires a wharf owner to keep his wharf in repair (he, of course, may, under certain circumstances, be liable for injuries done to persons or property by reason of its bad condition), or which forbids him from destroying his wharf.

If this is so, then the wharf owner must have the right to regulate the use of his property, for the power to destroy includes, of necessity, the power to regulate.

The State of Virginia, when it conferred upon the riparian owners the right to wharf out into navigable waters, might have annexed, as a condition to the exercise of the right conferred, an obligation on the part of the riparian owner to forever permit the use of his wharf by others, or to assume and to forever perform the duties of a wharfinger, but this was not done, as will be seen from the statute on the subject which appears in Code of Virginia of 1887, Section 998, and has been heretofore quoted in full.

Therefore we repeat that no one could have prevented the plaintiff from destroying the wharves owned by it, and *a fortiori*, it must have the right to restrict the use of its wharves.

In the case at bar the defendants were warned in the latter part of November, or the early part of December, 1902, not to use the plaintiff's wharves, but continued to use each of the same regularly six times every week before, as well as after, the bill of complaint was filed in the case, which was in April, 1903.

For the purposes of the argument let us admit that the owners of the wharves in controversy had always allowed all vessels to use their wharves indiscriminately, and thereby their wharves had become public. Let us even admit that the permission had been extended to the defendant's steamer. Under such circumstances, these wharves would be considered public wharves, because every one desiring to use the same had, by express permission or the conduct of the wharf owner, the license, express or implied, to use the same. The rights of the public would thus depend upon the existence of the license. Withdraw the license, and the public character of the wharf is destroyed. The only limitation on the owner's authority is that the license, express or implied, cannot be withdrawn summarily and without proper notice and the intended patrons thereupon treated as trespassers. The defendants had at least four months' warning and notice to desist from landing at the wharves, and the law would certainly regard such a notice as ample, particularly when it is taken into

consideration that the defendants do not rely on the insufficiency or unreasonableness of the notice, but upon a claim of right, which they assert no notice, or in fact any action, on the part of the wharf owner can impair or affect. Accordingly, even in the supposed case the defendants could not have lawfully continued the use of these wharves.

That a wharf owner may revoke a license to use his property is settled in the following cases:

Railroad Company vs. Hanning, 15 Wall. 649.
Ilwaco, etc., Co. vs. Oregon Short Line, 57 Fed. Rep. 673.
Coney vs. Brunswick, etc., Steamboat Co., 42 S. E. Rep. 498, 116 Ga. 222.
Bogart vs. Haight, 20 Barb. 251.
Heaney vs. Heaney, 2 Denio, 625.
Swords vs. Edgar, 59 N. Y. 28, 31-32.
Compare— O'Neill vs. Aunett, 27 N. J. L. 290.
See also— Am. & Eng. Encyclopedia, First Edition, Vol. 29, page 64.

In Railroad Company vs. Hanning, 15 Wall. 649, supra, Hanning sued the Railroad Company for personal injuries suffered by him by reason of a defect in a wharf of the defendant, upon which he claimed that he had a right to be, as it was a public wharf. The Court, on pages 659-660, says:

> "It would seem that prior to the passage of the act authorizing the defendants to occupy and possess the wharf, it had been open to the public, free to the passage of all, at their pleasure to come and go. The Judge charged, in substance, that this right of passage to the public continued until some notice should be given to those accustomed to use it that their rights had ended. This principle is one of quite general application. A railroad or steamboat company, by the departure and arrival of their conveyances, give an invitation to all who desire to approach their boats

or cars to pass over their wharf or platform. One accustomed so to pass cannot be deemed a trespasser in repeating his act after a new station or landing has been adopted and the cars or boats have ceased to use the old one. To exclude the passer's right so as to make him in fault, and to prevent his recovery for an injury sustained by leaving the place in a bad condition, notice must have been given of its changed character, and that the rights of passers are terminated. This principle is so familiar, and exists in so many forms, that it is unnecessary to elaborate it."

Farnham on Waters and Water Rights, Vol. 1, page 562, on this question says:

"The owner (of a wharf) may allow persons to use it as a matter of accommodation without losing his control over it, and the fact that he has done so will not prevent his terminating the license at any time, either as to the public generally, or as to any particular person; and, in case his business is made to suffer by the attempted use of the wharf by others without his consent, equity may afford him relief if there is no adequate remedy at law."

We therefore contend that upon the authorities, as well as upon reason, a wharf made public by a permissive user thereof by the public can be converted by the owner, into a private wharf upon, and after a reasonable notice to the public to discontinue the using of the same.

The learned Circuit Court, in its order refusing the injunction and dismissing the bill (Record, pages 465-466), recited that * * * "and upon the admission of fact made in open Court by counsel for both parties, that the steamboat of the defendant, the People's Steamboat Co., ceased to ply the Rappahannock River, in December, 1903, and has not since plied the waters of said river, nor touched nor landed at any of the

wharves mentioned in complainant's bill," etc., the said bill be dismissed.

We are at a loss to see how this alleged fact is material, or why it should have been inserted in the decree of the Court, for it formed no part of the Record upon which the case was argued, and is a fact occurring after all the testimony in the case had been taken, and the filing of the Master's Report and the trial of the cause before the Court. Surely a trespasser cannot defeat the jurisdiction of the Court by ceasing from trespassing on the day upon which the decree of the Court in a proceeding to restrain the trespassing is signed; otherwise the property rights of the plaintiff can be invaded at any time with ease and safety. This is not nor is there evidence of a disclaimer on the part of the defendants, and, if there were, the decree should have allowed costs to the plaintiff.

The rule of law that subsequent events have no bearing upon the jurisdiction of a Court, and that ordinarily this jurisdiction is determined by the facts existing at the time suit is commenced, is stated in the 16th Vol. of "Cyclopedia of Law and Procedure," page 113, as follows:

> "The rule is almost absolute that jurisdiction of equity is to be determined by the facts existing when the suit is commenced. If the plaintiff is then entitled to the aid of equity, the jurisdiction will not be defeated by subsequent events which render equitable relief unnecessary or improper."

Busch vs. Jones, 184 U. S. 598.
Mills vs. Green, 159 U. S. 651, 654.
Clark vs. Wooster, 119 U. S. 322.
U. S. Mitis Co. vs. Detroit Steel and Spring Co., 122 Fed. Rep. 863, 866.
Kirk vs. DuBois, 28 Fed. 460.
Hohorst vs. Howard, 37 Fed. 97.

See also Beedle vs. Bennett, 122 U. S. 71, wherein it is held that if a bill in equity to restrain an infringement be filed before the expiration of the patent, the jurisdiction of the Circuit Court is not defeated by the expiration of the patent by lapse of time before the final decree.

In conclusion, the effect of the decree herein complained of is *confiscation,* for it imposes upon the plaintiff's property a use without its consent and without any judicial proceeding to fix the value of the property taken. Even if the defendants were vested with the power of eminent domain, which is not claimed, and even if, by the exercise of that sovereign power, property could be taken away from one common carrier and transferred to another for the same purpose, the offer of the defendants to pay compensation, at the rate of ten per cent. of the gross amount received by them, for the business done at each wharf, they reserving the right to fix their own freight and passenger rates, and thereby preserving to themselves the power of fixing the amount of compensation to be paid by them for the use of the wharves, does not make the decree herein in any sense less confiscatory. Ordinarily, readiness and willingness to pay compensation is no excuse for taking or using private property against the consent of the owner. In our judgment, if the defendants are entitled to the use of the wharves of the plaintiff against its protest, they would by the same reasoning be justified in boarding the plaintiff's steamers, manning them with their own crews and using them for their own purposes, provided they would offer to pay to the plaintiff for their use a percentage of the gross revenue. For, why should one part of the plaintiff's transportation plant be immune from seizure and use, and not the other? The argument that the wharves are public because in navigable waters means that private wharves cannot exist, as, obviously, a wharf that does not extend into navigable waters would be absolutely useless.

The decree unreversed means that no common carrier by water in the Fourth Circuit can maintain for its sole and exclusive use wharf facilities which at all times will be subject to its con-

trol, when it needs no argument to show that in order to properly carry on its business and to perform its obligations to its patrons the carrier must have wharves which can be used as and when the exigencies of its business require. We accordingly contend that the wharves are *private property*, although owned or leased by a common carrier and used by it for its business as such, and that it was well within its rights when it sought to prevent their use by a company which was operating a steamer in direct, open and avowed competition with the plaintiff's steamers, and stopping at these wharves despite its oft-repeated protests and warnings not to do so, and using them, not for transacting business with it as a common carrier, but to take away, and, if possible, to utterly destroy the business of the plaintiff, built up by many years of faithful service and the hazard and investment of large sums of money.

We further contend that our position is not only sustained by the law which protects private property and the statute and authorities applicable to the erection, maintenance and use of wharves, but by the principles which require that trade competition shall be fair, and that, as a general proposition, it is essentially unfair to require one of two competitors to furnish his rival with the sinews of war to accomplish the destruction of his own business.

For the aforegoing reasons and upon the authorities herein cited, as well as upon the grounds stated and the authorities cited in the Report of the Special Master (Record, pages 112-118), we respectfully submit that the decrees of the lower Courts should be reversed, as it was error to dismiss the plaintiff's bill of complaint.

Respectfully submitted,

ST. GEORGE R. FITZHUGH,
NICHOLAS P. BOND,
GEORGE WEEMS WILLIAMS,
Solicitors for Weems Steamboat Company of Baltimore City, Petitioner.

Office Supreme Court, U. S.
FILED.
FEB 17 1909
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 181.

WEEMS STEAMBOAT COMPANY OF BALTIMORE CITY, PETITIONER,

vs.

PEOPLE'S STEAMBOAT COMPANY ET AL.

BRIEF FOR RESPONDENTS.

WM. D. CARTER,
ELLERBE W. CARTER,
Counsel for Respondents.

(20,858.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 181.

WEEMS STEAMBOAT COMPANY, PETITIONER,

against

PEOPLE'S STEAMBOAT COMPANY ET AL.,

RESPONDENTS.

BRIEF FOR RESPONDENTS (DEFENDANTS).

Statement of Facts.

About the year 1870, certainly as early as 1874, two steamboats belonging to and operated respectively by separate owners were put on the run from Baltimore to points on the Rappahannock River and return. These two boats, named respectively "Winona" and "Matilda," ran on different days of the week and landed and received freight and passengers at the same wharves in the Rappahannock River. There were some wharves in existence when the boats began to run, and others were built later, from time to time, by riparian owners.

Record, pages 180 and 182, testimony of plaintiff's witnesses.

Record, page 157, testimony of plaintiff's witnesses.

Later on, by sale and purchase, the owners of one of these two steamboats acquired the other, and afterwards added still other boats to the fleet. This consolidation was the

origin of the "Weems Steamboat Company" (the petitioner), and the organization was chartered about 1892. Competition with the Weems Steamboat Company by other steamboats was several times attempted, but unsuccessfully in each instance.

The Weems Steamboat Company acquired, early in its history, besides its terminal wharf at the city of Fredericksburg, five wharves along the river. Of these five, three, to wit, Port Royal, Leedstown, and Tappahannock, certainly, were situated at places that had been ports for the respective towns whose names they bear since early colonial days, and had been devoted to public commerce long before the "Winona" and "Matilda" were built; and the wharves proper, or pier heads, of each are now respectively located approximately where the pier head at each port named has always been.

Record, page 197, testimony of plaintiff's witness, Mr. Williams.

But at Tappahannock, and also at Port Royal, the "bridge" (or way from the pier head to the shore) has been diverted so as to strike the shore a little to one side of the ancient abutment.

After being incorporated, the Weems Steamboat Company purchased from the respective owners several additional wharves at which their steamboats had been stopping, such purchases in every instance being of the larger and, commercially, more important of the river wharves not already owned by the Weems Company.

Record, page 460—Statement of Facts found by Circuit Judge.

The Rappahannock River is navigable from the city of Fredericksburg to its mouth, where it empties into Chesapeake Bay. The distance from Fredericksburg to the mouth of the Rappahannock is, approximately, one hundred and twenty-five (125) miles. From the mouth of the Rappahannock to Baltimore, by the route of the steamers up

Chesapeake Bay, is, approximately, one hundred and thirty (130) miles.

As late as the years 1900 and 1901 only an occasional service was given by the Weems Steamboat Company above Tappahannock. Some part of the time two boats a week would go to Fredericksburg, often only one boat a week. Some boats would go as far as "Naylors," five miles above Tappahannock, and there turn back for Baltimore. Even such boats as were run through to Fredericksburg very often stopped over night between Tappahannock and Fredericksburg, forcing passengers for the latter-named city to remain all night upon the boat, at the added expense of meals and state-rooms (neither being included in the charge for transportation, nor furnished to passengers except for added compensation).

The result of this policy on the part of the Weems Steamboat Company was to leave the people inhabiting the sections of country on both sides of the river above Tappahannock isolated, and to deprive them of any adequate facility for shipment of freight or for travel. Sail vessels, for the most part, carried the freight (Record, page 196), while persons who wished to reach the outer world generally traveled overland long distances by private conveyance. [There is not a mile of railroad in the quadrangular section of tidewater Virginia bounded on the north and northeast by the Potomac River; on the east by Chesapeake Bay; on the south by the right of way of the Chesapeake and Ohio Railway from Doswell to Richmond, and the right of way of the "Southern" from Richmond to West Point, and by York River; and on the west by the right of way of the Washington Southern Railway, from the Virginia end of the Long Bridge at Washington to the Chesapeake and Ohio crossing at Doswell (if we except the electric line from Alexandria to Mt. Vernon).]

Testimony of Mr. Williams, Record, page 196.

The people along the Rappahannock protested against the inadequacy of transportation facilities afforded them by the

Weems Steamboat Company, and those representing the commercial interests of the city of Fredericksburg also protested, to the management of the Weems Line. It was duly represented to Mr. Henry Williams that a smaller boat than those plying Chesapeake Bay would, if run so as to connect with of if run in conjunction with the bay boats, afford much-needed relief. The representations and petitions of the people produced absolutely no effect on the Weems Steamboat Company.

Record, pages 344, 361, 362, 364, 365 *et seq.*

In 1901 the Business Men's Association of Fredericksburg took steps to inaugurate an additional boat service on the upper Rappahannock. The "Tourist" was first chartered, then purchased, and the People's Steamboat Company, the respondent, was incorporated and operated the "Tourist" on the run between Fredericksburg and Urbanna. Terminal facilities were provided by the People's Steamboat Company at both Fredericksburg and Urbanna. The route of about one hundred and twenty (120) miles and back was covered by the "Tourist," according to her schedule, three times each week, down one day and return the following day.

Within a short time after the "Tourist" began to run on the Rappahannock River, touching at all wharves along her route, which were devoted to the usual purposes of commerce, and resting at her own terminal wharves between her trips, the Weems Steamboat Company procured from a large proportion of the owners of the wharves it had not purchased "exclusive leases," purporting to exclude other steamers from using the wharves, but leaving them open for sail vessels. Out of the thirty (30) wharves on the river the Weems Steamboat Company "acquired" twenty-two (22), and notified the officers of the "Tourist" and those of the People's Steamboat Company that each of the twenty-two (22) wharves owned or leased by it (the Weems Steamboat Company) was strictly a private wharf, and forbade the landing of the "Tourist" at any of the twenty-two (22) wharves

claimed by them, leaving open to the "Tourist," as well as to its own boats, the eight (8) unimportant wharves which the Weems Steamboat Company had been unable to purchase, or exclusively lease, or had not deemed necessary to "acquire" from the owners.

Record, page 190, cross-examination of plaintiff's witness, Mr. Williams.

Record, page 193 *id.*

The People's Steamboat Company disregarded the prohibition of the Weems Steamboat Company, under advice of counsel, and continued to land and receive freight and passengers at all wharves between Fredericksburg and Urbanna. The People's Steamboat Company paid wharfage, or tendered wharfage, for the use of every wharf at which it landed, at the same rates paid by the Weems Steamboat Company at wharves not owned by it.

Record, pages 367-368.

Some five or six months after the "Tourist" began to ply between Fredericksburg and Urbanna the Weems Steamboat Company advertised to, and did, put on a boat called "The Caroline" to run between Fredericksburg and Urbanna, upon the same schedule, and going down the same days the "Tourist" schedule called for her to go down, and returning on a like identical schedule with the "Tourist."

Record, pages 189-193.

The Rappahannock is a tidal river; its banks are in many places (as is true of the large majority of navigable estuaries along our Atlantic seaboard) wide marshes, impracticable to travel over. Its navigable channel meanders, approaching first one shore, then the other, and is narrow in comparison with the visible expanse of water lying between the banks of the river itself. There are comparatively few locations not already occupied by wharves where additional

wharves can be built, except at an expense that is prohibitive.

Record, page 160, plaintiff's witness on cross-examination.

All of the wharves involved in this controversy consist of a pier head constructed on pilings driven into the bed of navigable waters, and the pier head is connected with the shore by a bridge built upon piling, the length of the bridge depending on the distance from the edge of the navigable channel to the river bank. The lower part of the river varies greatly in width, from less than one mile to more than three miles, but the navigable channel is much narrower.

At no place where any wharf involved in this controversy is located is there any other wharf. Each is the "only facility of the kind" at the place, even at the larger towns.

Each of said wharves is the usual and regular shipping place of its town or village, and neighborhood, respectively.

The Issue.

The "plaintiff" says in its bill of complaint (Record, pages 8, 9, 10) that it is entitled to an injunction perpetually restraining the respondent from landing its steamboat at any wharves owned or leased by the "plaintiff," although admittedly "the public" is invited to use, and does use, all such wharves for general shipping purposes, because—

(*a*) The use of the wharves by the respondent would deprive the plaintiff *of the profit of carrying* the freight and passengers which the respondent carries or may carry (*i. e.*, the plaintiff claims a vested right to immunity from competition in rendering a public service, with the accompanying right to have that vested right protected by injunction).

(*b*) The wharves are private structures built on private property, and the manner of their use is absolutely under the

control of the plaintiff; therefore injunction is the appropriate remedy to prevent "trespasses" on such private property.

(*c*) The plaintiff has a right to open its wharves to public business; then discriminate as to what members of the public it will serve; and injunction is its appropriate remedy against such members of the public as actively deny the plaintiff's assumption of the right to "discriminate" in serving the public.

The respondent denies the right of the "plaintiff" to have an injunction (or any other equitable relief in the premises), and as contradicting the "plaintiff's" reasons respectively, cites:

(*a*) Wilcox *v.* Consolidated Gas Co., 29 Sup. Ct. Rep., 192, at 200.
Record, page 193 (Mr. Williams refused to testify as to earnings).
Statute 21, James 1st, clause 23.

(*b*) Gibbon *v.* Ogden, 9 Wheat. (U. S.), 1.
Martin *v.* Waddell, 16 Peters (U. S.), 367.

(*c*) Munn *v.* Illinois, 94 U. S., 85.

The Pleading.

The importance of an authoritative decision of the points involved in this case—not ~~merely~~ nearly so much to the carrier corporations, however, as contended by counsel for the petitioner (Brief of Counsel for Petitioner, pages 34, 35, 36), as to a very large proportion of the total population of this country—fully justified the taking of evidence in this cause and a hearing thereon upon the full record.

It is respectfully submitted that, as to the wharves in controversy claimed by the petitioner (plaintiff in the court below) to have been "leased" by it, the "plaintiff" is out of court on the bill of exhibits—the alleged "leases." The contracts exhibited show that while they grant, or purport to grant, a "license," they *convey no estate.* They are techni-

cally not "leases," but at best only maritime contracts of wharfage. The consideration expressed being a "share in" or based on the gross earning of the steamers using the wharf, is conclusive of the maritime character of the contracts.

Ex parte Easton, 95 U. S., 68.
James T. Furber, 129 Fed., 808.
The Allianca, 56 Fed., 609.
Brainsted *v.* Denton, 115 Fed., 428.
Ex parte Lewis, 2 Gall. (U. S.), 483.
The Ann Ryan, 7 Ben. (U. S.), 20.

The answer and exhibits show conclusively that the licensor of the plaintiff, in each instance where the plaintiff claimed to have "leased" a wharf, also licensed the respondent, and accepted from the respondent compensation on the same basis. The right of the respondent appears, on the pleading, equal (as to the "leased" wharves) to the right of the "plaintiff" (petitioner).

Linthicum *v.* Ray, 9 Wall. (U. S.), 241.

If the petitioner's licensor breached any valid contract with the petitioner, the recourse of the petitioner (plaintiff) would naturally be, not against this respondent, but against the other party to the petitioner's (plaintiff's) contract. The petitioner cannot sue this respondent as to the "leased" wharves upon its own showing of its case. No wharf owner except the Weems Steamboat Company is suing. The "plaintiff" cannot sue for a "trespass" upon the property of another.

ARGUMENT.

In their brief counsel for the appellant, alleging error in the decision of the court below, base their argument upon the proposition that—

> "The plaintiff is not, because it is a common "carrier, bound to permit competing vessels to make "use of its wharves for the purpose of such com-"petition."
>
> Brief of Plaintiff's Counsel, page 9.

The facts of the case justify no such premise, yet counsel for the appellee (respondent) may concede the point, for it is not because it is a common carrier that the "plaintiff" is permitted to own any wharf in the navigable waters of the Rappanannock. The right to "wharf out," neither under the common law nor by statute, is conferred upon any common carrier as such. No common carrier takes such right by Magna Charta, nor has it such *"jus naturalis."* The privilege of constructing pier wharves, and duties which arise when the privilege is exercised, pertain only to riparian proprietors. If the "plaintiff" owns a wharf, it is as a riparian proprietor, and not because it is a common carrier, that it is permitted to hold, maintain, and enjoy the same.

Ill. *Ex rel.* Hunt *v.* Ill. Central R. R., 184 U. S., 77, at page 86, and 146 U. S., 1018, Syl., 6.

Yates *v.* Milwaukee, 10 Wall., 497.

Dutton *v.* Strong, 1 Black, 23; 17 L. E., 29.

Virginia Code, sects. 998 to 999 (set out below pages 16-17).

We respectfully submit for the respondent that equity and justice require that the appropriate rules of law be made to apply to every riparian proprietor alike One riparian proprietor who has exercised his privilege of constructing a wharf may enjoy his structure in his own way, and put the

wharf to his own use alone, or to his own use collectively with others, *provided the uses are restricted* and the location and surrounding circumstances permit such use without injury to the public.

Dutton *v.* Strong, 1 Black, 23, *supra.*

Louisville & Nashville, &c., *v.* West Coast Naval Stores Co., 198 U. S., 483.

Another riparian proprietor may construct a similar wharf, which, under the just application to the facts of the same rules of law, will be held affected with a public interest either because of the purpose for which it was built, the use to which it is devoted, or its location. And, it is respectfully submitted, a *riparian proprietor* who is also a *common carrier* is entitled to no immunity as regards the duties required of it in connection with its wharf *because it happens to be a common carrier.* It is still subject to the same rules of law. Public rights will no more be given away gratis to a carrier corporation than to an individual.

The record fails to show that the "plaintiff" (the Weems Steamboat Company) ever ESTABLISHED a wharf. On the contrary, its ownership of wharves began by purchase of existing wharf properties. Its late acquisitions—Wellford's, Sharp's and Whealton—were purchased in full operation and public use. In the light of the unassailed and unassailable evidence set forth in the record, each of the wharves claimed by the Weems Steamboat Company to be owned by it in fee was not only built for a shipping facility for the public in its locality, but was actively and actually devoted to the public service for hire—wharfage—from the time it was built.

Can a mere transfer of the ownership of the structure from the riparian proprietor who built it to another proprietor change the character of the public business which *continues to be done* at and over the wharf and make such business "private?"

Counsel for the plaintiff (the Weems Steamboat Company) answer this question in the affirmative.

In their bill of complaint (Record, page 7) counsel make the plaintiff say:

> "Your orator submits that from these decisions of the United States courts the wharves owned by your orator on both sides of the Rappahannock River, and those owned by private individuals, are the private property of their respective owners, as much so as any other property they may own, and the public have no interest in or rights to the use of said wharves, except such as the owners thereof choose to grant them, and any person seeking to use said wharves for any purpose without such permission of the owners is a trespasser, and that this right of your orator to the exclusive use of its wharves applies equally to those wharves which it leases from others as aforesaid.
>
> "Your orator further submits that any person, without the owner's permission, touching at any of the aforesaid wharves of your orator, with a steamboat or vessel, for the purpose of securing or discharging freight or passengers, is a trespasser, and any person coming upon such wharves to receive or deliver such freight, or landing or taking passage from such wharves, without the permission of the owner, is also a trespasser.
>
> "Your orator further submits that neither Congress nor the Virginia legislature can give the public any right to the use of your orator's private wharves aforesaid, nor can they interfere with their exclusive use by your orator so long as said wharves, piers and bulkheads do not obstruct the navigation of the Rappahannock River."
>
> Record, pages 7-8.

Will the court thus limit the power of State legislatures and Congress or stamp with its approval *this* construction of the law?

Mr. Chief Justice Marshall, delivering the opinion of this

court, deciding Martin *v.* Waddell (16 Peters, at page 410), said:

> "When the Revolution took place the people of each State became themselves sovereign, and in that character *hold the absolute right* to their *navigable waters and the soil under them*, for their own common use, subject only to the rights since surrendered by the Constitution."
>
> Martin *v.* Waddell, 16 Peters, 367, at 410.

Honorable John Randolph Tucker, reporting for the Judiciary Committee to the Forty-ninth Congress, May 13, 1886, referred to article 4, section 2 of the Constitution of the United States, and said:

> "It has been settled by the highest authority in the English courts that ever since Magna Charta the Crown cannot grant to a subject a several fishery in an arm of the sea, or in navigable waters, but that ALL SUCH WATERS AND THE BEDS THEREOF are vested in the Crown for the benefit of the subjects thereof, and not to be *used in any manner to derogate from the right of navigation* which belongs to the subjects of the realm.
>
> "This royal title held for the benefit of the subjects of the Crown, which cannot be alienated *to their detriment*, has been thus recognized ever since Magna Charta." (Italics ours.)
>
> "In this country, by a series of decisions, the Supreme Court of the United States has settled the law in accordance with the English courts—that upon the Revolution the rights of the Crown in navigable waters and inclusive of arms of the sea devolved upon each State as to all such waters within the territory of each of them."
>
> Martin *v.* Waddell, *supra.*
>
> McCready *v.* Virginia, 94 U. S., 391.

The views of the plaintiff (the Weems Steamboat Company) are further expounded and testified to by its president, Henry Williams, as follows (Record, page 185):

"Q. Then am I to understand, or not, that the five wharves now owned by the Weems Steamboat Company have never been held out as public wharves?

"A. They never have been held out as public wharves, and I never built a wharf since I had control, unless we had the clear fee simple title to the land on which it was built. I never would build a wharf at the foot of a public road, and I always insisted upon it that the wharves were our own private property, built on our own land, on which we paid taxes regularly, and that it is as much a trespass for any people to go on them without permission as it would be for them to come into my private house; because we have a deed to the land and it is only used for our business, just as a merchant uses his store; and the man who comes there is a trespasser, and nothing but a trespasser, in my opinion."

Record, page 185.

As to which the plaintiff says in its bill:

"Because rights of your orator to the exclusive use and enjoyment of all of said wharves, and the exclusive possession thereof being established by the law of the land, your orator is entitled to be quieted therein, and to be protected against the continuous trespasses thereon of the defendants and the public, and a multiplicity of suits avoided."

Record, page 10.

From which it appears that the plaintiff and its counsel, it is respectfully submitted, radically mistake the status of wharf property, as established under "Magna Charta," as fixed by the laws of the United States and declared by decisions of this honorable court—at least when, as in the case at bar, the wharves are not located within the "ripa," but project for hundreds of yards into the waters of a navigable river.

For the title to navigable waters, and to the soil under water in navigable rivers, is and must be held in perpetual trust for the public as beneficiary. As was said by the Su-

preme Court of Appeals of North Carolina in deciding Shepherd's Point Land Co. *v.* Atlantic Hotel:

> "But it is a title different in character from that which the State holds in lands intended for sale. It is different from the title which the United States holds in the public lands which are open to preemption and sale. It is a title held in trust for the people of the State, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties. The interest of the people in the navigation of the waters and in commerce over them may be improved in various instances by the erection of wharves, docks, and piers therein, for which purpose the State may grant parcels of the submerged land, and, so long as their disposition is made for such purpose, no valid objection can be made to the grants. It is grants of parcels of land under navigable waters that may afford foundation for wharves, piers, docks, and other structures in the aid of commerce, and grants of parcels which, being occupied, do not *substantially impair the public interest* in the lands and waters remaining, that are chiefly considered and sustained in the adjudged cases as a valid exercise of legislative power, CONSISTENTLY WITH THE TRUST TO THE PUBLIC, UPON WHICH SUCH LANDS ARE HELD BY THE STATE." (Italics ours.)
>
> Shepherd's Point Land Co. *v.* Atlantic Hotel, 44 S. E., 39.
>
> Smith *v.* Maryland, 18 Howard (U. S.) Rep., 71, at 74.

Chapter LX of the Code of Virginia contains the following (section 1338, Code of 1887):

> "Beds of bays, rivers and creeks and shores of the sea, ungranted, to remain in common.
>
> "All the beds of the bays, rivers, creeks, and the shores of the sea within the jurisdiction of the Commonwealth, and not conveyed by special grant or compact according to law, shall continue and remain the

property of the Commonwealth of Virginia, and may be used as a common by all the people of the State for the purpose of fishing and fowling, and of taking and catching oysters and other shell fish subject to the provisions of chapters ninety-five, ninety-six and ninety-seven, and any future laws that may be passed by the General Assembly; and no grant shall hereafter be issued by the Register of the Land Office to pass any estate or interest of the Commonwealth in any natural oyster bed, rock, or shoal, whether the said bed, rock or shoal shall ebb bare or not.

"SEC. 1339. Rights and privileges of owners to extend to low water mark.

"Subject to the provisions of the preceding section, the limits or bounds of the several tracts of land lying on the said bays, rivers, creeks, and shores, and the rights and privileges of the owners of such lands, shall extend to low-water mark, but no further, unless where a creek or river, or some part thereof, is comprised within the limits of a lawful survey."

Code of Va. (1887).

The sections quoted were found in the Virginia Code of 1887 and brought forward unchanged. Any act by the Virginia legislature to a contrary effect would have been void.

Gibbon *v.* Ogden, 9 Wheat., 1 (6 L. E., 23).

Pollard *v.* Hagan, 3 Howard, 212.

But though his domain stops at low-water mark, the riparian proprietor (and he alone) may build out a wharf structure in aid of navigation.

Mobile Transportation Co. *v.* City of Mobile, 13 L. R. A., 352.

Farnham on Waters, vol. I, page 227, sec. 113 B.

Dutton *v.* Strong, 1 Black, 23.

Yates *v.* Milwaukee, 10 Wall., 497.

The legislature of Virginia has, by statutory enactment, declared this rule of law also.

Code of 1887, section 998, is as follows:

> "Any person owning land upon a water course "may erect a wharf on the same, or pier or bulkhead, "in such water course opposite his land; provided "navigation be not obstructed, nor the private rights "of any person be otherwise injured thereby. But "the circuit court of the county in which such wharf, "pier, or bulkhead is, after causing ten days' notice "to be given to the owner thereof, of its intention to "consider the subject, if it be satisfied that such "wharf, pier, or bulkhead obstruct the navigation of "the water course, or so encroaches on any public "landing as to prevent the free use thereof, may abate "the same."

And section 999 is as follows:

> "Any person desiring the privilege of erecting "a wharf at or on any county landing may, after "giving notice of his intention by advertising such "notice at some public place near the landing, and "also on the front door of the court house of such "county, on the first day of a term of the court of "said county, present to the court at its next term a "petition for such privilege. The court may deter- "mine the same, and may, in its discretion, grant "such privilege and fix such rates and charges upon "such conditions and limitations as to it may seem "fit. But the court, at any subsequent term, may, if "it think proper, revoke such privilege, or alter such "conditions or limitations, or regulate the rates and "charges. This section shall not be construed to "authorize a circuit court of the county to grant the "privilege of erecting a wharf within a city."

In the building of a wharf under section 998, *supra*, the riparian proprietor exercises an inherent privilege which he enjoys under the law. Whether he makes of his wharf a private "staith" or a public facility depends mainly on the use to which it is subsequently put. He may charge

for the use of his wharf, but the charge must be "reasonable" if he serves the general public.

Code of Virginia, section 999, *supra.*

Transportation Co. *v.* Parkersburg, 107 U. S., 691.

Riddick *v.* Dunn, 58 S. E., 493.

Mobile Transportation Co. *v.* City of Mobile, 13 L. R. A., 352.

Gibler *v.* St. Louis Terminal R. Ass'n, 101 S. W. 37 (203 Mo., 208).

The last case cited gives an exposition of the duties owed the public by a toll bridge owner, and differentiates between such a public servant and a common carrier. Both serve the public, but a common carrier furnishes transportation. The duties of a wharf owner serving the public, it is respectfully submitted, are the same as those of a bridge owner, with added responsibilities on the wharf owner to serve, so to speak, both publics—(1) the public of individual patrons coming to his wharf to secure the services of a carrier, and (2) the carrier public coming to the wharf in the line of securing business or discharging traffic.

Whether incoming or outgoing freight is offered makes no difference; whether brought to the wharf by land by A with horses or by B with oxen as "motive power" does not concern the wharf owner; whether brought by water in a steam vessel, a sail vessel, a gasoline launch, or a row boat furnishes no ground for discrimination. It is "a familiar fact" (quoting counsel for plaintiff) that a large per cent of the patrons of these wharves come and go by water, not only fishermen and oystermen, but farmers and merchants as well.

The rule, we respectfully submit, must be the same as to the impartial reception and handling of freight at a wharf or "station" *provided for the handling of freight* as at a "baggage room," provided and equipped for the handling of baggage.

And with reference to baggage the Supreme Court of Georgia said:

"It being the duty of a carrier as such to receive "the baggage of those who desire to travel upon its "lines, it is its duty also to provide suitable and con- "venient facilities for the reception thereof. Such "facilities as it prepares must be furnished without "discrimination to all alike who desire to avail them- "selves of the use of such facilities. This is a public "duty. It is not granted as a favor, but may be de- "manded as a right."

Hart *v.* Atlantic Terminal Co., 58 S. E., 452, at 458.

Tift *v.* Southern Railway Co., 127 F., 789.

If the circuit court of a Virginia county permit any individual to build out a wharf from a "public landing" under Code, section 999, *supra*, it needs no argument to show that the public is the riparian proprietor, and the licensee builds under the power or privilege of the licensor—the county, or, in other words, the public.

Any person building a wharf under the provisions of section 999 would be the proprietor or actual owner of such wharf. He would be entitled to the emoluments earned by it. It would be his "property," and is by State law made taxable as such. But the statute says the court may regulate the rates and "charges," which by necessary implication refers to "wharfage." Such wharf, under the statute, must be open to the public.

But counsel for the "plaintiff" contend, under the facts of this case, that such wharf "property" is "private property," unaffected by a public interest; that it is held by a title identical in character with the title to a residence, or even a "store," as was said by Mr. Williams in testifying and by the "plaintiff's" counsel in their bill and briefs. We respectfully submit that every *such* wharf is irrevocably affected with a public interest *"ab condide,"* no matter how often it may be conveyed and pass from vendor to vendee.

Virginia Code, 1887, sec. 999, *supra*.

Weber *v.* Board of Harbor Com'rs, 18 Wall., 61; 85 U. S. (L. E.), 789.

Being of the nature of realty—being in fact realty—the seizin must lie in grant in Virginia.

Virginia Code of 1887, sec. 2413.

Hence the futility of cumbering the record in the case at bar with a vast array of title deeds. Having admittedly tendered wharfage to the petitioner for the use of wharves claimed by the petitioner as its own property, the respondent could not here question the right of the plaintiff to exercise all lawful rights pertaining to ownership of the structures.

Linthicum *v.* Ray, 9 Wall. (U. S.), 241; 19 L. E., 657.

The uncontroverted evidence shows, the finding of the Special Master to the contrary notwithstanding—

That Bowler's wharf was built out from a public landing under a statutory license from the county court.

Record, pages 414, 341, 431.

Also as to Bay Port, that that wharf abuts upon a public landing, bought and paid for by the county of Middlesex, Virginia, under regular court proceedings thereupon had.

Record, pages 432, 433, 434.

Record, pages 338, 339.

Also as to Tappahannock. The ancient plat of the town (made upon parchment) shows an open river front more than two blocks in length, extending above and below the location of the present and all former pier heads, the lots being definitely laid out and numbered, the wharf being located opposite a point on the shore between Prince street (B) and Queen street (A).

Record, page 191.

Record, page 347 (Saunders' Survey).

Record, page 414 (plat).

And the landing place or "shore," *not included in any of the lots,* has not been lost to the public by "decretion," but exists today as "shore"—land above water.

Record, page 347.

Reference to the plat shown opposite page 414 of the Record, in the note at the lower right-hand corner (the original in the clerk's office of Essex County, Va., being on parchment, as disclosed by the record and dated A. D. 1710), shows that prior to the laying out of the town the place or locality was known as "Hob's Hole." (As a matter simply historical, it may be said here that "Hole" was a colonial corruption of "hold," viz., "stronghold.") The lots laid off as shown by the plat were, presumably, and, in fact, sold, and have come down as private property, except the public square. The streets were "dedicated." They were, and are, public. If the other "streets" are public, then why not the river shore, where the same was not platted in any lot? We submit that even on the face of the plat alone the plaintiff has failed to make good, as against the public, its title to the strip of river shore at Tappahannock, and its paper title, failing to connect with any grant from the sovereign (made either before or since 1776), is worthless as a muniment of title to make the plaintiff a *riparian* proprietor. (We do not question the plaintiff's ownership of the wharf itself.) Like the streets, like the public square whereon stands the court-house of the county, the river shore belongs to "the public." The public hold by right of purchase, and the record of their title in support of the ancient plat may be found:

"HENING'S STATUTES AT LARGE."

1682–1710.

ACT V.

"An Act for Dividing Rappahanoc County.

"Whereas sundry inconveniences attend the inhabitants of Rappahanoc county and all others who have occasions to prosecute law suits there, by reason of the difficulty in passing the river,

Rappahannock county formed into two distinct counties. That part lying on the north side of the river, to be called *Richmond*; and that on the south, *Essex*.

"*Be it therefore enacted by their Majesties Lieutenant Governour, Councell and Burgesses of this present generall assembly and the authority thereof, and it is hereby enacted*, That the aforesaid county of Rappahanoc be divided into two distinct counties, soe that Rappahanoc river divide the same, and that that part which is now on the north side thereof be called and known by the name of *Richmond* county, and that that part which is now on the south side thereof be called and known by the name of Essex county; and for the due administration of justice.

Court days of Richmond county.

"*Be it enacted by the authority aforesaid, and it is hereby enacted*, That the court of the said county of Richmond be constantly held by the justices thereof on the first Wednesday of the month, in such manner as by the laws of this countrey is provided, and shall be by their commission directed.

Of Essex.

"And the court for the said county of Essex be constantly held by the justices thereof on the 10th day of the month, in such manner as by the laws of this countrey is provided, and shall be by their commission directed.

Town land, at Hobs Hole how appropriated.

"*And be it enacted by the authority aforesaid, and it is hereby enacted*, That whereas the town land lying at *Hobs hole* (*a*) on the south side of the said county was purchased by the

entire county as now it is, the charge thereof being equally defrayed by the whole number of the tytheables of the said county, that the moiety of the tobacco arising from the sale thereof, to the severall takers up of the aforesaid lands, be repaid unto the inhabitants of the north side thereof, upon the takeing of the said land at the town aforesaid.

Record of Rappahannoc county, to be transferred to Essex.

"*And be it enacted by the authority aforesaid, and it is hereby enacted*, That the records belonging to the county court of Rappahanoc before this division be kept in Essex county, that belonging wholly to their majesties and the other to the proprietors of the Northern Neck."

The evidential value of the foregoing extract from Hening's Statutes has been fixed by the legislature of Virginia, for section 3327 of the Code of 1887, brought forward unchanged into the Code of 1904, provides as follows:

> "The thirteen volumes of the statutes of Virginia from sixteen hundred and nineteen to seventeen hundred and ninety-two, heretofore published by William Waller Hening," * * * "shall be received as evidence in the courts of this State, for any purpose for which the original acts or resolutions could be received, and with as much effect."

The people of Essex County—the "Tytheables"—paid with "tobacco" they raised amid the primal strife with the elements and with savage foes, for the strip of river shore in front of Tappahannock. They bought with tobacco and expected to sell lots for tobacco. Tobacco was currency. They purchased, and did not purchase to sell again, the strip of shore. The orderly plat carefully made, the numbered lots, with field notes to locate and bound them, taken in connection with the act of the "Councell and Burgesses" quoted above, it is respectfully submitted, make the conclusion inevitable that from the laying out of the town in 1710 the

water front for at least two of the town blocks in length has ever been public land held in common, and, located as it is, a public landing.

Linthicum *v.* Ray, 76 U. S., 19; L. E., 657.

We hazard the conjecture that the privilege of building a pier out from the public landing at Tappahannock was by the old county court of "high sheriff" and "magistrates" conferred upon some progressive citizen, just as in later days, as shown by the Record (page 341), the county court permitted Hundley and Newbill to build a wharf out from the public landing at Bowler's. If not, then necessarily the wharf was built without authority and the proprietor was tenant at will of the county (or town). The proprietor sold the wharf. It was his "property." Other transfers followed, and the vendee in some transaction of the kind undertook, ignorantly, to buy "the shore" upon which the wharf bridge abutted. In time he conveyed, until the Weems Steamboat Company holds the color of title. "*Nullius tempus occurit regi.*" The Weems Steamboat Company is tenant of the public, both as to shore and channel at Tappahannock.

City of New Orleans *v.* Louisiana Const. Co., 140 U. S., 35; L. E., 556.

Weber *v.* State Harbor Com'rs, 85 U. S. (L. E.), 798; 18 Wall., 61.

The same or a similar state of facts will appear affecting other of the more ancient wharves, whose character as public or private is brought into controversy in this proceeding.

The organization and act of the "Councell and Burgesses" laying out and establishing Port Royal may be found in "Hening's Statutes at Large." A copy of the town plat indicating the landing reserved to the public is in evidence in the record. The records of Caroline County in earlier days were not well preserved. But the deeds vouched by the plaintiff as muniments of its title to be classed as a riparian

proprietor at Port Royal contain provisions of indemnity against any claim of the shore being used as a public landing. The very presence of this covenant to indemnify is suggestive. We quote:

> "And it is hereby understood and agreed that should any portion of said wharf be upon or in the public road, or street, or upon the land of any private individual, the said Elizabeth Thornton hereby covenants and agrees and binds her separate property to indemnify the said parties of the second part for any loss they may hereafter sustain by eviction, or by the use without remuneration of any portion of said wharf by other persons; in the event that any portion of the said wharf is upon or in the public road, or street, or upon the land of any private individual. A plat of said land hereby conveyed is herewith attached, and is to be taken as a part of this deed. To have and to hold to the said parties of the third part, their heirs and assigns, the said land in the following proportions, to-wit, to said Jacob Tome, his heirs and assigns, one hundred and seventeen four hundredths thereof," etc.
>
> Record, pages 268-269.

An inspection of the plat at Port Royal Wharf (Record, opposite page 236, second plat) shows the pier *head* opposite the main street, and the shifting of the "bridge" to make it abut upon the shore above the street is apparent from an inspection of the plat itself.

Record, page 176.

The old plat of Leedstown is also extant, showing a public shore reserved.

But, it is respectfully submitted, under the decision in Dutton *v.* Strong, 1 Black., 23, a private wharf, when maintainable at all, must be devoted habitually to private business. Even though built by a private proprietor opposite his own shore (a condition the record shows does not exist as to at least some of the wharves in controversy here), if

devoted to purposes of public commerce for compensation, it is a public wharf. Every wharf involved in this controversy, as the record conclusively shows, is, and has been, used by the public, the owner receiving the wharfage. At every wharf mentioned the Weems Steamboat Company (a public carrier) and other carriers, though the latter may use sails instead of steam as motive power, meet the public upon ground in which that public has an indefeasible interest (*i. e.,* the bottom under water supporting the wharf) for transaction of business *with the public.* The character of the business, whether public or private, is but little affected by the number or magnitude of the transactions. The ferry, with a crew of two, which may only carry an average of three or four passengers per trip or per day, is public. The yacht of a man of wealth, though carrying a crew of a hundred hands, and thronged with invited guests, its displacement perhaps exceeding that of the nation's more modest "men-of-war," is yet private. So with wharves.

Dutton *v.* Strong, *supra.*

Hence, counsel for the Weems Steamboat Company, we respectfully submit, are peculiarly unfortunate in their construction of the opinion of this court in

Louisville & Nashville R. R. *v.* West Coast, &c., Co., 198 U. S., 483.

In that case it appears with remarkable clearness that the Louisville & Nashville R. R. Company was the bailee of all goods delivered on or loaded over the wharf involved in the suit at the time and before such goods arrived at said wharf. The public transacted no business at the wharf with the railroad company. The case was decided by this court without impairing the potency of the rule laid down in Dutton *v.* Strong, *supra,* and the decision does not conflict with any of the fundamental principles supporting public rights as declared by Sir Matthew Hale in "De Portibus Maris," and by Chief Justice Marshall in deciding Gibbon *v.*

Ogden, *supra*. The wharf being located in Pensacola, a world-famous port and harbor, it was not "the only facility of the kind at the place." Hence the decision rests squarely upon the same grounds upon which the case of the coal "staith" reserved for a single owner's business was justified and the rule declared, and the same author says:

> "If the King or a subject have a public wharf "unto which all persons which come to that port "*must come* and unlade or lade their goods as for the "purpose, because they are the only wharves duly "licensed by the King, *or because there is no other* "*wharf in the port*, as it may fall out," etc. (Italics ours.)

Lord Hale's "De Portibus Maris" (as quoted by plaintiff's counsel, page 23 of Brief in C. C. A. below).

If all persons "must come," then by necessary implication, "any" person "may" come, etc. This makes the wharf public—*i. e.*, when the public "may" use it at will—paying, of course, for the use. And whether "licensed" or not, Lord Hale's language means, when it says "because there is no other wharf in the port," that the wharf is by reason of *that* circumstance a public wharf.

No modern case entitled to consideration by this court has been cited by counsel for the plaintiff, or can be cited by them, which annuls or overrides the doctrine laid down by Lord Hale, *supra*. On the contrary, the better considered of the more modern cases in which the principle is involved exactly coincide with the views Lord Hale expressed.

Dutton *v.* Strong, 66 U. S., 1.

Louisville & Nashville R. R. *v.* West Coast Naval, &c., Co., 198 U. S., 483.

Transportation Co. *v.* Parkersburg, 107 U. S., 691.

Oregon Short Line, &c., *v.* Hwaco, &c., Navigation Co., 57 Fed., 673.

The last case just cited was first decided against the proposition that the railroad company could exclude other vessels

than its own from landing. (See opinion in 51 Fed. Rep., 611.) But it was appealed and the decision reversed. It plainly appears from the language of the court (1), the wharf was used by the corporation owning it simply as a facility for transferring the passengers and freight brought to the wharf by its own boat to its own trains and *vice versa*, and was *not* a depot or "station," and (2) the court finds that there were "other wharf facilities" at the place. So the case as finally decided is in exact accord with the doctrine laid down by this court in Louisville & Nashville R. R. Co. *v.* West Coast Naval Stores Co., *supra*.

Counsel for petitioner overlook in their statement of this case made on page 27 of their brief that the court expressly says there was a depot or station provided elsewhere with ample facilities (57 Fed., at 677), and that there was another wharf available sixteen hundred feet away (*Id.*, 675).

That a private wharf *may* be maintained is no longer an open question. But applying the test laid down in Dutton against Strong to any wharf involved in this controversy, it is respectfully submitted, forces the inevitable conclusion that from its use (past and present) as well as by reason of the purpose for which built, its location, and the nature of the structure, such wharf is public. Every wharf in controversy was built by its original owner, as Robert L. Ware so pertinently testifies in his own case, "to benefit" himself "*and the public*." Every wharf has been used by the public as a public wharf for the shipment and receipt of freight, and for embarking and disembarking for travel over the adjacent navigable waters, the proprietor receiving compensation therefor. Every wharf is the only facility of the kind "in aid of navigation" in the locality. Finally, "the nature of the structure" is fitted for the purposes for which it has been used, and, so far as the record shows, each wharf is capable of performing the function of an "aid to navigation" in the particular locality where it is located.

Counsel for petitioner seem to no longer rely on Lord Hale's expressions. They do cite and quote from

Louisville & Nashville R. R. Co. *v.* West Coast Naval Stores Co., 198 U. S., 483.

But, it is respectfully submitted, counsel fail to correctly grasp and properly apply the principles elucidated in that opinion by Mr. Justice Peckham (198 U. S., 483).

On page 12 of their brief, counsel for the petitioner quote, with italics, the following language of Mr. Justice Peckham:

> "The question of the rights of the plaintiff must "really turn upon the character of the use of the "wharf, whether it is public or private."

Failing to gather from the plain language of the opinion that no members of the public, as such, were served at the Pensacola wharf, but only *agents and servants* of the Louisville and Nashville R. R. Company transacted the company's business there with each other—never, so far as the opinion shows, with any patron of the railroad—counsel for the petitioner are misled into asking the question set forth in the second paragraph on page 15 of their brief. The answer is plain—no part of the *public* was invited to the Pensacola wharf. However numerous those who were admitted, they were *all* servants of the owner. The use was "private." The facts shown by the record in the case at bar show far different conditions surrounding the use of every wharf in controversy.

Discrimination and Restraint of Trade.

In deciding Gibbon *v.* Ogden, already referred to herein (9 Wheat., 1), Mr. Chief Justice Marshall, after declaring the inalienable right of every citizen to navigate any public waters of the nation, unhampered by any restrictions save

such as the laws of Congress might impose on all vessels of the class and kind, said:

> "The acts of New York must yield to the laws of "Congress; the decision sustaining the privilege they "confer, against a right given by law of the Union, "must be erroneous."
>
> Gibbon *v.* Ogden, 9 Wheat., at page 210.

The "privilege" conferred was the exclusive right to navigate the Hudson River with vessels propelled by steam.

The question involved in the case at bar is in practical effect the same raised in Gibbon *v.* Ogden, except that in Gibbon *v.* Ogden the exclusive "privilege" was sought to be acquired by direction, with the sanction of the legislature of New York, and the approval of the highest appellate tribunal of that commonwealth.

In the case at bar, the exclusive "privilege" is sought indirectly, by excluding from the landing places of an entire river all competing vessels propelled by steam.

The inhibitions contained in the "leases," set out in the Record, apply to steam vessels. The testimony of the plaintiff's chief witness and the dates of the "leases" themselves show that the leases are a "system;" or perhaps it would be more accurate to say they are a part of a system; for the conduct of the management of the Weems Steamboat Company, as shown by the Record, can be construed in no other light, it is respectfully submitted, than that of a bold effort to drive off competition and preserve a monopoly of steam navigation on the Rappahannock River—to do indirectly in Virginia what this court forbade in New York.

There is needed no argument to show that the right to land and lade and unlade cargo, to receive and discharge passengers, is as essential a part of the right to navigate, as is freedom to get the ship under way and plow the waters to the next port. Wharves exist, not to prop a monopoly, but as "aids to commerce."

"A wharf is a necessity of modern navigation, and of navigation alone. The sole object of its erection is to facilitate the transportation of passengers and freight *upon navigable* waters * * * Every vessel has a license to use, for her safety or convenience, any public wharf on navigable waters, upon paying reasonable wharfage. * * * We think that in determining the character of the appellant's wharf, regard should be had *to the use to which it has been devoted,* rather than its private ownership." (Italics ours.)

Kate Tremaine Case, 62 Fed. Cas., No. 7622 (5 Ben., 60).

"To hold a contrary doctrine would tend to promote monopolies, which it is not the policy of our law to favor."

Barrington *v.* Commercial Dock Co., 33 L. R. A., 116.

"To burden the exercise of a constitutional right with conditions which materially impair its value, or which, practically, compel the abandonment of the right rather than submit to the conditions, is, in law, an infringement of that right."

Dissenting opinion of Mr. Justice Harlan in Transportation Co. *v.* Parkersburg, 107 U. S., 691.

Can the riparian owner who has built a wharf from his shore out into the navigable waters of the Rappahannock and invited the public to use his wharf, and who for hire has habitually so served the public, burden that service with any such "condition" as that the shipping public must take passage over his wharf, either upon sailing vessels or else patronize exclusively the steamers of a single carrier?

"There is no doubt that the general principle is favored, both in law and justice, that every man may fix what price he pleases upon his own property, or the use of it; but if for a particular purpose the public have a right to resort to his premises and make

> use of them, and he have a monopoly in them for that purpose, if he will take the benefit of that monopoly, he must, *as an equivalent, perform the duty attached to it* on reasonable terms." (Italics ours.)
>
> Munn *v.* Illinois, 94 U. S., at page 5.

This being the law as to property on shore, *i. e.,* public elevators, does the same rule not *a fortiori* apply to the wharf owner who has built beyond his absolute domain, into waters of which the public is the ultimate beneficial owner? Or can such wharf owner, by the device of an "exclusive lease" to a carrier, or otherwise, having begun to serve the public, *discharge himself* from the burden of the "duty attached" to his business, which requires him to refrain from discriminations, and from entering into any arrangement with others, the nature and principal effect of which arrangement will be to restrain trade or commerce?

> "Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person, or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations shall be deemed guilty of a misdemeanor," etc.
>
> Act of Congress passed July 2nd, 1890, 2nd section, U. S. Comp. Stats., 1901, page 3200.

The penalty declared for violation of the act is a fine of five thousand ($5,000) dollars, or imprisonment, or both. It is not contended that the facts shown by the record disclose an infringement of the act of Congress quoted from. The reason, however, is technical; the "trade and commerce" attempted to be monopolized, as shown by the record in the case at bar, is intrastate. But the *reason* of the law applies civilly as much to intrastate trade and commerce as to trade between the States, or with a foreign nation.

> "Whether a contract is in restraint of trade or not, depends on what may be done under it, not upon

what has been or is being done. Even partial restraint is illegal."

Pocahontas Coke Co. *v.* Powhatan Coal & Coke Co. (W. Va., 1907), 56 S. E., 264.
Mines *v.* Scribner, 147 F., 927.
U. S. *v.* Trans-Missouri Freight Association, 166 U. S., 190.

The conduct of the Weems Steamboat Company, it is respectfully submitted, discloses a policy tending to close monopoly. An examination of any single one of the "exclusive leases," under the terms of which all steam vessels, except those owned by the Weems Steamboat Company, were to be denied the use of the wharf, would seem conclusively to show that the main object of the "lease," not its incidental effect, was to cut off competition in the carrying trade; for the sail vessels, as is disclosed by the record, carry usually a different class of freight from that carried by the steamers; it is not contended by counsel for the plaintiff that the sail vessels carry any passengers, and we may safely assume that they do not. The so-called "leases" are maritime contracts of wharfage.

Kate Tremaine Case, *supra.*

When it is ascertained that out of thirty wharves on the river, between Fredericksburg and Chesapeake Bay, all but eight, and those eight commercially the least important, have been monopolized by the plaintiff, the facts surrounding the "leases," and the terms and effect of the "leases," collectively, attract attention.

"Syl. 6. Contracts in Restraint of Trade.—A single "contract, although it be such as, taken alone, may "not be within the rule at common law against con- "tracts in restraint of trade, which is *one of a great* "*number of* identical contracts, made between the "producer of an unpatented article of commerce and "dealers therein, forming a 'system' of contracts, "which, taken as a whole, *materially affect the pub-*

"*lic interests by stifling competition and trade* in "said article is an unreasonable restraint, and within "the rule at common law against contracts in re- "straint of trade, if from an examination of the "whole system, it appears that the restraint is act- "ually, though not ostensibly, the main result and "object of the system of contracts, and not merely "ancillary or incidental to another and legitimate "object." (Italics ours.)

John D. Park & Sons *v.* Hartman, 153 Fed., 24.

Will the rule against contracts in restraint of trade and commerce be more liberally construed in the case of a common carrier seeking to monopolize a carrying trade (which it did not produce) than in the case of a *producer* of an "unpatented article of commerce?"

Should any doubt linger in the minds of the court as to the contracts evidenced by the "exclusive leases" (we note that in referring to these contracts in their later briefs counsel for the Weems Steamboat Company omit the qualifying adjective formerly applied by themselves) being void as against public policy, we respectfully submit that the surrounding facts disclosed by the record conclusively condemn them. We challenge the accuracy of the statement, twice made in their brief by counsel for the Weems Steamboat Company (pages 8 and 29, Brief of Counsel for Petitioner), that "all the wharves in controversy were built" * * * "for the use of the Weems Company," and refer to the record to sustain our statement that the majority of the wharves in question were public shipping places, some of them for generations, before the "plaintiff" attempted to monopolize them.

The leases themselves show by their dates that they were all procured within a very brief period of time. The evidence in the record shows that the call for "leases" began as soon as it was understood by the Weems Steamboat Company that a steamer not owned by them was operating on the Rappa-

hannock River. The evidence, as well as the faces of the leases, show that the Weems Steamboat Company ardently desired to limit competition to sailing craft, regardless of the rights of the public, of other craft, or of the wharf owners apart from themselves. "Leases" had not been demanded until competition that competed appeared. The testimony of R. L. Ware, a witness introduced and examined by the "plaintiff," explains his fear that the boats of the "plaintiff" might refuse to make his wharf a landing place. He gave an "exclusive lease" when it was demanded, but (regarding his wharf as public?) he had a regular scale of charges for steamers and a similar scale for sail vessels; he accepted wharfage from all. J. H. Whealton, another witness for the "plaintiff," says he owned some three miles of river front; that he provided, in selling land on the river, against any other wharf being built in the neighborhood, and money was loaned him by the "plaintiff" "without interest" (Brief of Counsel for Petitioner, page 6). Mr. Whealton so far regarded his wharf as public that he, too, accepted wharfage whenever it was tendered by the respondent.

These two, Ware and Whealton, together owned five miles of river front. With how many persons (or how few) would it be necessary for the "plaintiff" to make similar contracts of "exclusion" in order to absolutely bar other steamers from the practical navigation of the river?

Mr. Henry Williams, explaining the policy of the company (the "plaintiff"), said on the stand that he warned off all other "STEAMERS."

Brief for Petitioner, page 5 (Record, page 222).

While many of the statements of fact made by Mr. Williams are opposed to the great weight of evidence in the cause, we may concede his accuracy in making the statement that it was other steam craft that he desired to keep away.

Compare testimony of Mr. Williams, page 5, Brief of Petitioner's Counsel, and Court's Opinion, Record, page 462.

We deem it reasonable to infer that counsel for the petitioner address their argument to the support of their views, already indicated, of the law governing the "questions at issue" as put by them in their petition for writ, page 7.

We quote:

> "Is the Weems Steamboat Company, because it is "a common carrier, bound to permit competing ves- "sels to make use of its wharves for the purpose of "such competition?"

We have already answered, it is respectfully submitted, the first "question at issue," quoted above, from petition of the Weems Steamboat Company. It is with the Weems Steamboat Company as a wharf owner, and not as a common carrier, that the cause of this controversy arose. Therefore it is immaterial, in this suit, how the question quoted may finally be judicially determined.

Again we quote:

> "Did the petitioner become a common carrier as "to these wharves in the sense that it was bound to "accord to the public, or the respondents, a right to "use these wharves for a purpose in no way related "to its business upon payment of compensation?"

Like the owner of a toll bridge, or like any other wharf owner, as we have endeavored to show, the Weems Steamboat Company makes its wharves public by accepting custom and toll for serving the public at, and by means of, its wharves. It cannot accept the emoluments from the public and be immune from the accompanying duties; there is nothing in the fact that the wharf owner is also operating steam vessels in the public carrying trade to relieve it from performing a duty it would clearly owe the public if it were not also a common carrier by vessels (since none of the wharves in controversy are "terminal facilities"). Answering this second question of counsel for petitioner in the

affirmative, it is respectfully submitted, conflicts with no doctrine declared or approved in—

Louisville & Nashville R. R. Co. *v.* West Coast Naval Stores Co., 198 U. S., 483.

The record shows that the Weems Steamboat Company paid the owners of wharves other than itself *ten* per cent. on the amount of compensation the company received for transporting freight delivered on or received over each such wharf. It also appears that the Weems Steamboat Company paid its own wharf agents at wharves owned by it *five* per cent. on the gross amount of traffic. The difference, five per cent., is wharfage collected by the Weems Steamboat Company from the public.

Record, pages 142, 158, 173, 178, 216, 219.

The company, as a wharf owner,

> "stands in the very gateway of commerce and takes
> "toll from all who pass."

The five per cent. of the freight tariff on all incoming or outgoing freight—

> "tends to a common charge, and is become a thing
> "of public interest and use."
>
> Munn *v.* Illinois, 94 U. S. (L. E.), 85, at 86.

Counsel for the petitioner say (page 23 of their brief):

> "The defendants in our case did not have, and
> "did not profess to have, any business of its own
> "with the Weems Company."

Counsel forget the testimony of their chief witness, Mr. Williams, who testifies as to the wharfage tendered by "the defendants in our case."

Record, page 188.

The third issue stated by petitioner's counsel is:

> "Does the fact that public roads have been built to the shore ends of certain of these wharves have any effect on their character as private wharves?"
> Appellant's Petition, page 7.

It is unnecessary to decide the point in order to decide the case at bar. We admit for the respondent that the building of a public road to a private wharf would not *make* the private wharf public. But, we respectfully submit, that it is extremely improbable that public money would be spent in eastern Virginia by boards of supervisors and county courts in making public roads for private purposes. When a public road was built to a privately owned wharf *after* the wharf was in operation, it may be taken as strong (aye, even conclusive) evidence that the wharf was serving the public, and the public needed a highway kept up at the public expense to travel on in reaching the wharf. The light thrown on the *inquiry as to the use* to which the wharf was devoted is an ample function for the evidence (as to the location of the wharves with reference to public roads) to perform in the case at bar.

The Post-Office Department of the National Government does not habitually install post-offices in private houses, and the location of post-offices upon some of the wharves and at or near others is also a circumstance of evidential value as indicating the public interest in the wharves *growing out of public use*. Counsel for the petitioner refrained from making any inquiry as to the "effect" of the establishment of a post-office, as at "Ware's," upon the wharf itself. It is conclusive, it is respectfully submitted, that the public interest existed, or the post-offices would not have been located as the evidence shows they were.

Their fourth question is:

> "Does the fact that nearly all of these wharves are built in the open country along the banks of the

> river, and not in towns and cities, make any difference in their real character?"
>
> Appellant's Petition, page 7.

Counsel for the petitioner say this question "cannot be answered in the affirmative without overruling the case of Louisville & Nashville Railroad Company *v.* West Coast Naval Stores Company, 198 U. S., 483" (Petition, page 7). We fail to see any support for this contention of counsel. We deny their *proposition*. The question is evidently the presentation, in a new form, of the criticism of counsel for petitioner, aimed at the honorable judge of the United States Circuit Court for the Eastern District of Virginia, and set forth in the brief of appellant's counsel (on page 58 of their brief in this cause filed in the Circuit Court of Appeals below). In his opinion upon deciding the case at bar (when pending in the United States Circuit Court) the learned judge of that court used the following language:

> "These wharves, it must be borne in mind, are not the landing places or piers of a line of steamers in a city; but are mere wharves along the bank of a river in the country; *in the main at the termini of public country roads*" (italics ours); "and hence the means, and only means, whereby the people of the community can reach the river and use the means of commerce navigating the same. These wharves were all built that they might be so used, and for the profit that was in the use; and they have been continually thus used."
>
> Record, page 462.

Counsel for the Appellant said in their brief in the court below:

> "We have never imagined that, in this country of equal rights, it could ever be gravely contended that property rights in our cities were more sacred than similar rights in the rural districts, or that the principles of law upon which the rights of private property rested were radically different in town and country," etc.
>
> Plaintiff's Brief in C. C. A., pages 58-59.

But, notwithstanding the attempted sarcasm of counsel, the justices of the United States Circuit Court of Appeals, by a *per curiam* opinion, adopted and approved the opinion of the honorable circuit court, as appears from the record in the case at bar.

The Legislature of Virginia, in adopting section 999 of the Code (quoted *supra*, page 17) said:

> "This section shall not be construed to authorize a circuit court *of the county to grant the privilege of erecting a wharf within a city.*" (Italics ours.)
>
> Code of Virginia, 1887, section 999.

On the preceding page (page 57) of their same brief, counsel for the appellant, apparently without realizing the fact, answer and elucidate their own objection.

They there say:

> "The learned judge was confronted with the familiar fact that almost, if not all, steamship and steam packet companies, having their *terminals* in *cities*, owned their own wharves and had their exclusive use," etc.
>
> Brief of Appellant's Counsel in C. C. A., page 57.

Can counsel point to an instance where a "steamship or steam packet company" has its "*terminals*" "along the bank of a river in the country?" Will counsel seriously contend that the *conditions* which influence and control the courts, upon grounds of wide public policy, in protecting public interests are the same as to the "terminal" of a steamship line in a city, and to a wharf "along the bank of a river in the country?" Surely it is for a reason based upon the soundest of public policy (where no "discrimination" is practiced or attempted) when such a carrier is allowed the exclusive use of its terminal wharves. And in every adjudicated case on the subject such exclusive privileges have only been allowed *in cities*, where it is "a familiar fact" that there will be found other wharf facilities.

> "I think, for the benefit it confers upon the distant "market, it should still be protected."
>
> Lord Hale, *De Portibus Maris*, justifying the maintenance of a coal staith as a private wharf.

Prompt transshipment and delivery of freight requires the rule.

Will counsel seriously contend that public interests will be promoted by applying this "terminal" rule of limited application, born of public interest and developed by the magnitude and pressure of modern commerce in cities (we apologize to counsel for the word), to "mere wharves along the bank of a river in the country," where it cannot be contended that PUBLIC interest requires the application of the rule? Do counsel contend that the rule should be applied in aid of a monopoly, AGAINST public interest?

The fifth question they state thus:

> "Is it true that the Weems Steamboat Company "could not allow the public to use its wharves or use "them itself in its business as a public carrier for the "public and thereafter discriminate between members "of the public in their use?"
>
> Appellant's Petition, page 7.

Again counsel for the petitioner have answered their own question, if they will consider the adjudicated cases on questions of discrimination; for, turning once more to their brief in the cause filed in the Circuit Court of Appeals, below, at page 60, we quote:

> "In case of the wharves in question, there is no "real dispute about the fact that they were all built "*to enable the public* to use exclusively one "medium "of commerce," etc. (Italics ours.)

Will counsel explain in connection with the above admission the rule, or test of the character of a wharf, announced in Dutton *v.* Strong, *supra?*

Continuing (C. C. A., Brief for Appellant, page 61), petitioner's counsel ask:

> "How can a steamboat company own a private "wharf and devote it *exclusively to the use of its* "*own boats and its own business?*" (Italics theirs.)

Can counsel not find the information they ask in the opinion of the Supreme Court of the United States deciding Louisville & Nashville R. R. Co. *v.* West Coast Naval Stores Co., *supra?*

And, sixth, they ask:

> "Is it impossible for the owner of a public wharf "to change it into a private wharf by proper notice, "or does the law say once a public wharf always a "public wharf?"
>
> Appellant's Petition, page 7.

In asking this question, counsel for the petitioner forget that in courts of equity words and acts, professions and conduct, are concomitant, if effective. The record shows no attempt to end the public interest at any wharf in controversy by any notice given in good faith accompanied by the appropriate line of conduct. If the owner of any wharf, built from private property on shore—for instance, Ware's—should wish to withdraw it from public service, we have little doubt that he could easily and promptly do so; but if he elect to continue to affect his wharf with a public interest, as up to this time his own statements, set forth in the record as testimony, conclusively show he has done, then a mere combination with one carrier of a class will neither justify nor excuse him for discriminating against other carriers of that class.

Dutton *v.* Strong, *supra.*

If counsel press this inquiry further, seeking an answer to cover the case when the wharf is public for other reasons

besides that of habitual public use for hire, we know of no authoritative case that is exactly parallel to which to refer; with the facilities available to us, we have been unable to find such case. The public money, as conclusively shown by the record, having been expended in the construction of highways to the wharves for the use of the public; private investments having doubtless been made in many instances on the faith of the permanancy of the public character of the wharf as well as on the faith of its being permanently maintained as a public facility for shipment of goods and as a passenger station, we know the courts have power in a proper case to enjoin any attempt to withdraw any such wharf from the public service, and in the premises, devote it to exclusively private use, to the detriment of the public. If the party wishing to withdraw such wharf from public service should first provide for the public other equally convenient and serviceable accommodations, it seems to us the court would then permit the withdrawal—the conversion of the wharf now public into a private wharf.

Baltimore, etc., R. R. Co. *v.* Compton, 2 Gill (Md.), 20.

Northern Pacific R'way Co. *v.* Territory, 3 Wash. Ter., 303.

Counsel for the petitioner make numerous references to cases involving disputes with railroad companies, about depots and "stations." Counsel apparently lose sight of the fact so evidently considered by this court in the "Cab Case"—Donovan *v.* Pennsylvania R. Co., 199 U. S., 296—viz: The railroad company bought and paid for its right of way and its tracks and equipment; therefore, as to all except those members of the public desiring to take passage or ship freight by it, its roadbed and depots are "private property." Even if the controversy in the case at bar were with the petitioner as an operator of steam vessels, carrying for hire,

could it then be said that their "right of way" in and over navigable waters was "private property?"

If the wharf be a "station," as contended, it is admittedly a "public station." This court has said:

> "A passenger upon arriving at the station, *in whatever vehicle*, is entitled to have such facilities for entering the company's depot as may be necessary." (Italics ours.)
>
> Donovan *v.* Penn., 199 U. S., 296.

In quoting the above, the Supreme Court of Appeals of Georgia said:

> "It is well settled that no hackman can be prevented from driving to the carrier's depot when his hack contains a prospective passenger, because, in respect to prospective passengers as well as in respect to those who have perfected the contract of carriage, such property is 'impressed with a public use.'"
>
> Hart *v.* Atlantic Terminal Co., 58 S. E., 452, at 459.

Can the boat of the respondent, having on board "prospective passengers" who wish to pass over the petitioner's wharf, expecting to pay for the privilege, be denied the privilege of landing because of an arbitrary discrimination against the vehicle; or against its owner, as the "agent" of the passenger desiring to land at the wharf?

> "If it should be found to be true that the defendant railroad companies, either in receipt or delivery of baggage by their baggage master, or other agents, discriminated against any passenger, *or the agent of any passenger* in the time or manner in which baggage was received or discharged, * * * such discrimination would be a palpable violation of their public duties," etc. (Italics ours.)
>
> Kates *v.* Atlantic Baggage & Cab Co., 34 S. E., 372.

Counsel for the petitioner have referred to the "Express cases" (117 U. S., 1), wherein this court has held that a railroad company having contracted to furnish car-room and transportation to an express company was not (on account of limited space on its trains) bound to furnish like room and transportation to other express companies.

In this connection counsel urge that the capacity of the wharves is limited. It is respectfully submitted that the case at bar will be decided here on the facts as found in the court below. If so, when the honorable judge of the circuit court said the wharves in question were "mere wharves along the bank of a river, in the country," he declared that no wharf in controversy was a terminal, nor a junction of transportation lines. In case of a junction or terminal (under the decision of this court in Louisville &c. Co. *v.* West Coast, &c. Co., 198 U. S., *supra*), if some other public wharf was provided at the place to serve the public of the locality, and the petitioner so desired, it might, it is conceded, reserve its wharf for "its private business"—the receipt and delivery of freight not originating at the point, but passing through and changing carriers—or changing vehicles in the control of one carrier—freight of which the carrier, (or connecting carriers) are bailee *through* the point; otherwise the argument, based on the "limited capacity" of the wharves in controversy, is against the petitioner; for the business at any of *these* wharves is the business of the *local* public, *and NO other*. If competition so fosters industry and builds up commerce that a wharf adequate for all the business done in the locality under a monopoly of transportation facilities to and from the locality becomes inadequate to handle the business that springs up so soon as there is competition, then, logically, competition serves public interests. There is no escape from the conclusion, we respectfully submit.

Neither counsel for the petitioner, nor its officials, agents, and servants who testified, it is respectfully submitted, have been either ingenuous or wholly consistent. For example,

when it was a question of obtaining a preliminary injunction against this respondent, counsel prepared a bill alleging great and irreparable injury and damage to the Weems Steamboat Company. The allegations were sworn to in the bill and in affidavits offered in support of the bill.

Record, page 97, W. D. Scott (Mr. Williams' Record, page 188).

When it comes to a question of the receipt of wharfage at, or for the use of, the wharves, then witnesses testify, and counsel urge, that the competition was too insignificant to be considered, etc.

Record, pages 144, 146, 164.
Brief of Counsel for Appellant in C. C. A., page 12.

Both "damage" and wharfage are admittedly fixed by the same volume of traffic, viz., that carried by the respondent. The testimony was all before the honorable United States Circuit Court below, and is reflected in the record, if the finding of facts by the court below is to be here reviewed.

The argument of counsel as to "delay," it is respectfully submitted, is of too flimsy a character to merit consideration, the evidence affording no foundation for any such argument. Under the schedules testified to, the "Tourist" and the "Caroline" had to travel one hundred miles a day at least, touching some twenty-odd intermediate wharves. It is self-evident that the stop at each wharf must be brief. The delay to the plaintiff's boat, or any boat wishing to make any wharf at which the boat of the respondent (People's Steamboat Company) was lying at any given moment, would necessarily be as brief as the delay every vessel engaged in commerce is likely to suffer, and often does suffer, in passing into its own terminal berth in a city harbor. The wharf owner has a right, like any other public servant, to make *reasonable* rules and regulations controlling the use

of the wharf by the public, and by such rules could readily prevent the inconvenience suggested by counsel for the petitioner.

Lincoln *v.* Pennsylvania, &c., 8 Pa. Co. Ct., 195.

In their bill the plaintiff mentions with emphasis the magnitude of its interests.

Record, page 6.

What has its alleged investment by the petitioner of five hundred thousand dollars in boats and fifty thousand dollars in wharf property to do with the principles of law involved in this controversy? It may be judicially observed that at least seven counties border the Rappahannock River; the assessed value of real estate alone in the smallest county must necessarily exceed the total alleged investment of the plaintiff. All real property values are affected by the presence or absence of adequate transportation facilities not controlled by a carrier in the enjoyment of a monopoly. The market price of wheat and corn is reduced to the producer by the cost of transportation. The value of the land that produces wheat and corn is directly affected by the permanent increase or decrease in the *net* price of the product; and *freight* is *"tare."*

It is said by counsel for the petitioner that this suit is not against the public, etc. Can counsel for the petitioner take such position, or gracefully put forward such argument? Have they not, in their pleading filed in the cause, and in the testimony of Mr. Williams, made a direct attack upon the rights of "the public," alleging the difficulty of maintaining actions at law against very many members of the public as grounds for equitable interference? Have they not denounced all members of the public actively opposing the maintenance of the petitioner's monopoly as "trespassers, and nothing but trespassers'?

We quote from the plaintiff's bill:

> "Your orator further says that *the public in all "the aforesaid counties* in which your orator owns or "controls the aforesaid wharves have, against the "protest of your orator, *used said wharves for the "purpose of landing* from or getting aboard said "steamboat 'Tourist' and for the purpose of shipping "freight on and discharging freight from said steam-"boat, *and are continuing to do so,*" etc. (Italics ours.)

The allegation, it is respectfully submitted, seeks to make the "public" the alleged tort-feasor in every "county." The plaintiff seeks to enjoin the respondent from lawfully serving *the public,* even passively.

Record, pages 6, 8, 185.

But, as was said by the court in deciding Degan *v.* Dunlap:

> "The owner" (of a wharf) "is under the same "obligation as an inn-keeper to receive those who "call, provided he has room and they tender a reason-"able compensation;" * * * "The licensing the "erection of a wharf to enable the owner to make a "profit of this space" (the area of public bottom appropriated) "is not an unlimited and unrestricted "gift."
>
> Degan *v.* Dunlap, 15 Phila. (Pa.), 69.

We think it would be superfluous to undertake to further discuss in detail "authorities" cited by counsel for the petitioner in their petition for the writ of certiorari, and in their brief filed here in support of the same. We have endeavored to meet, without evasion, each of the six "questions at issue" as counsel for the petitioner state those questions (at page 7 of their "petition"). Borrowing the apt language of the justice delivering the opinion of the court in Oregon Short Line, &c., Co. *v.* Ilwaco Navigation, &c., Co., 57 Fed., 673, "We have probably said enough to indicate our views."

Many of the references of counsel for the petitioner are to cases decided by courts restrained by lack of plenary jurisdiction from taking a comprehensive view of the subject, and counsel for the petitioner cite no decisions of this court that sustain them. The decisions of the State courts, collectively, bearing on the point involved in the case at bar are, as was said by the learned judge of the United States Circuit Court for the Eastern District of Virginia, "conflicting." They cover a wide range, from the case of Degan *v.* Dunlap, 15th Phila., 69 (which practically holds that, as to craft afloat, every wharf in navigable water is absolutely public), to cases that, while not going the length of, still incline somewhat towards, the views of counsel for the petitioner.

We think the principles declared in Gibbon *v.* Ogden, *supra*, and in Dutton *v.* Strong, *supra*, govern here. We see no departure from those principles in Transportation Co. *v.* Parkersburg, 107 U. S., 691, nor in Louisville & Nashville R. R. Co. *v.* West Coast Naval Stores Co., *supra*. On the contrary, we believe the two last-named cases emphasize and approve the test of the public or private character of a wharf laid down in Dutton *v.* Strong. If so, then the case of Oregon Short Line, &c., Co. *v.* Ilwaco Navigation, &c., Co. was rightly decided as reported in 57 Fed., 673. By the same test the case at bar, it is respectfully submitted, was rightly decided in the courts below on the facts and should be affirmed.

Respectfully submitted,

WM. D. CARTER,
ELLERBE W. CARTER.
Counsel for Respondents.

WEEMS STEAMBOAT COMPANY OF BALTIMORE v. PEOPLE'S STEAMBOAT COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 181. Argued April 26, 1909.—Decided June 1, 1909.

A wharf on a navigable stream is private property and subject to the absolute control of the owner as other property is.

The rights of a riparian owner on a navigable stream are governed by the law of the State in which the stream is situated, but subject to the paramount public right of navigation.

One of the rights of a riparian proprietor is to build private wharves out so as to reach the navigable waters of the stream, and this right has been affirmed by the courts of Virginia; but a wharf obstructing navigation or private rights of others or encroaching upon any public landing may be abated.

A private wharf on a navigable stream is the exclusive property of the owner of which he can only be deprived in accordance with established law, and, if taken for public use, on compensation being made.

A private wharf on a navigable stream is not held by the owner, as a railroad is, subject to the public use, and a third person has no right to demand its use even on tendering compensation therefor and even though there may be no other wharf at the place. *Munn* v. *Illinois*, 94 U. S. 113, distinguished. *Louisville & Nashville Railway Co.* v. *West Coast Naval Stores Co.*, 198 U. S. 483, followed.

The public obtains no adverse right against the owner of a private wharf by mere user; in the absence of an intent on the owner's part to dedicate, and an acceptance by the public authority, the use is mere license subject to withdrawal.

The remarks of Mr. Justice Bradley in *Transportation Co.* v. *Parkersburg*, 107 U. S. 691, as to the right of the owner of a private wharf to make arbitrary charges are *obiter* and are not applicable to the present case.

141 Fed. Rep. 454, and judgment of Circuit Court of Appeals, affirming it, reversed.

THE complainant (the above-named petitioner) commenced this suit in the Circuit Court of the United States for the Eastern District of Virginia against the defendant, the Peo-

ple's Steamboat Company and its officers and agents, for the purpose of obtaining an injunction restraining the corporation defendant from using certain wharves on the Rappahannock River, in the State of Virginia, of some of which the complainant was the owner in fee, and of others the lessee of the exclusive use from the owners. The complainant contended that it had the exclusive right to the use of such wharves, either as owner or lessee, and that the defendant illegally and against the will of the complainant insisted upon using them to carry on its business, although offering to pay the complainant what was the reasonable value of the defendant's use of such wharves.

The corporation and the individual defendants filed joint and separate answers, setting up a claim of right to the use of such wharves upon compensation being made therefor, and the case came before the court on motion of complainant for a temporary injunction, as prayed for in the bill of complaint. The court, without then passing upon any other question, ordered that the matter be referred to a special master for the purpose of taking such evidence as might be submitted to him by either party, or which he might find necessary to take, bearing upon the title to the several wharves mentioned in complainant's bill and claimed by complainant, and to ascertain what rights passed to complainant with the acquisition of such wharves and whether or not the wharves were public or private wharves. Pursuant to this order of reference, hearings were had before the master, who returned the evidence taken before him with his opinion in favor of granting the injunction as prayed for by the complainant, on the ground that the wharves in question were private wharves owned or leased by the complainant, who had the exclusive right to their use. The facts found by the master were not overruled, but his conclusions of law were not concurred in by the court, and the preliminary injunction was refused. The case was then submitted to the court for trial upon all the evidence taken, and the bill was dismissed with costs. 141 Fed. Rep. 454.

The complainant appealed from the decree of dismissal to the Circuit Court of Appeals for the Fourth Circuit, where it was affirmed upon the opinion of the Circuit Court.

The complainant then applied to this court for a writ of certiorari to bring the case here, which petition was granted, and the case has been submitted to this court upon the briefs of respective counsel.

Mr. St. George R. Fitzhugh and *Mr. George Weems Williams*, with whom *Mr. Nicholas P. Bond* was on the brief, for petitioner:

The mere fact that property is owned by a common carrier does not make such property subject to any and every public use. Neither does the fact that property may be used by a common carrier in its business as such subject it to any use that may be of supposed or actual benefit or advantage to the public, but the carrier fulfills its obligation if it permits the public, without discrimination, to use such property in transacting business with it as such carrier. *Donovan* v. *Pennsylvania Co.*, 199 U. S. 279; *Pittsburg &c. Ry. Co.* v. *Bingham*, 29 Ohio St. 364, 370; 1 Farnham on Waters and Water Rights, § 66, p. 297; Same, § 110, pp. 509, 510; Same, § 112, p. 523; Same, § 113*b*, pp. 533, 534; *King* v. *Russell*, 6 Barn. & C. 566; *Yates* v. *Milwaukee*, 10 Wall. 497; *Weber* v. *Board of Harbor Commissioners*, 18 Wall. 57.

The right to maintain private wharves in a navigable river was recognized again in *Transportation Co.* v. *Parkersburg*, 107 U. S. 691, and in *Ill. Cent. R. Co.* v. *Illinois*, 146 U. S. 387, 445, 446, and in *Dutton* v. *Strong*, 1 Black, 23.

The right of a riparian owner as to the erection of wharves in Virginia under statute, and the decisions of Virginia courts, is as follows:

Code of Virginia of 1887, § 998:

"Any person owning land upon a water course may erect a wharf on the same, or pier or bulkhead in such water course opposite his land, provided the navigation be not obstructed,

nor the private rights of any person be otherwise injured thereby. But the court of the county in which said wharf, pier or bulkhead is, after causing ten days' notice to be given to the owner thereof of its intention to consider the subject, if it be satisfied that such wharf, pier or bulkhead, obstructs the navigation of the water course, or so encroaches on any public landing as to prevent the free use thereof, may abate the same." See *Norfolk City* v. *Cooke*, 27 Gratt. 430, 435; *Railway Co.* v. *Faunce*, 31 Gratt. 761, 764, 765; *McCready* v. *Commonwealth of Virginia*, 27 Gratt. 985; *Hardy* v. *McCullough*, 23 Gratt. 251, 262.

The statutes of Virginia and the decisions of its courts govern in the determination of the rights of a riparian owner in the navigable waters of that State. *Shively* v. *Bowlby*, 152 U. S. 1, 24–26; *Illinois Central Ry. Co.* v. *Illinois*, 146 U. S. 387; *St. Anthony Falls* v. *St. Paul*, 168 U. S. 349.

The plaintiff is not, because it is a common carrier, bound to permit, upon any terms, vessels competing with its own for the same business to make use of its wharves for the purpose of such competition, and can exclude not only competitors, but all persons, from the use of its wharves, except those who have business to transact thereat with it as a common carrier.

The fact that public roads have been built to the shore ends of certain of these wharves has no effect on their character as private wharves or the plaintiff's rights to limit their use to its own patrons or other persons having business with it as a common carrier.

The fact that nearly all these wharves are built in the open country, along the banks of the river, and not in cities or towns or harbors or places where there may be more than one landing place, makes no difference in the real character of these wharves, whether public or private.

The law does not declare that a wharf, which is public in the sense that the owner thereof has permitted the public to use it for any purpose upon payment of compensation, shall for all time remain public, but allows the owner thereof to change the

public character of such a wharf by a proper and reasonable notice. See *Louisville & Nashville R. R. Co.* v. *West Coast Naval Stores Co.*, 198 U. S. 483; *Exterkamp* v. *Covington Harbor Co.*, 104 Kentucky, 796; *Brisbine* v. *St. Paul Railway Co.*, 23 Minnesota, 114, 129, 130; *California Nav. Co.* v. *Union Co.*, 126 California, 433; *Irwin* v. *Dixion*, 9 How. 33; *Coney* v. *Brunswick St. Co.*, 42 S. E. Rep. 498; *S. C.*, 116 Georgia, 222; *Mills* v. *Evans*, 100 Iowa, 712. See also *Bogert* v. *Haight*, 20 Barb. 251.

The opinion of the Circuit Court complained of herein disregards the principles of the cases which hold that a common carrier has the right to select its agencies for conducting its business and to decline to allow other carriers the use of its terminal facilities. *Atchison &c. R. R.* v. *Denver & N. O. R. R.*, 110 U. S. 667; *Express Cases*, 117 U. S. 1; *St. Louis Drayage Co.* v. *Louisville & N. R. R.*, 65 Fed. Rep. 39.

That a wharf owner may revoke a license to use his property is settled in the following cases: *Railroad Company* v. *Hanning*, 15 Wall. 649; *Ilwaco &c. Co.* v. *Oregon Short Line*, 57 Fed. Rep. 673; *Coney* v. *Brunswick &c. Co.*, 116 Georgia, 222; *Bogert* v. *Haight*, 20 Barb. 251; *Heaney* v. *Heaney*, 2 Denio, 625; *Swords* v. *Edgar*, 59 N. Y. 28, 31, 32. Compare *O'Neill* v. *Aunett*, 27 N. J. L. 290; see also 29 Am. & Eng. Ency., 1st ed., 64.

Mr. William D. Carter, with whom *Mr. Ellerbe W. Carter* was on the brief, for respondents:

The right to "wharf out," neither under the common law nor by statute, is conferred upon any common carrier as such. No common carrier takes such right by Magna Charta, nor has it such "*jus naturalis*." The privilege of constructing pier wharves, and duties which arise when the privilege is exercised, pertain only to riparian proprietors. If the "plaintiff" owns a wharf, it is as a riparian proprietor, and not because it is a common carrier, that it is permitted to hold, maintain, and enjoy the same. *Hunt* v. *Ill. Central R. R.*, 184 U. S. 77, 86;

S. C.,146 U. S. 387; *Yates* v. *Milwaukee*, 10 Wall. 497; *Dutton* v. *Strong*, 1 Black, 23; Virginia Code, §§ 998, 999.

Equity and justice require that the appropriate rules of law be made to apply to every riparian proprietor alike. One riparian proprietor who has exercised his privilege of constructing a wharf may enjoy his structure in his own way, and put the wharf to his own use alone, or to his own use collectively with others, provided the uses are restricted and the location and surrounding circumstances permit such use without injury to the public. *Dutton* v. *Strong*, 1 Black, 23; *L. & N. R. R. Co.* v. *West Coast Naval Stores Co.*, 198 U. S. 483.

The title to navigable waters and to the soil under water in navigable rivers, is and must be held in perpetual trust for the public as beneficiary. *Martin* v. *Waddell*, 16 Pet. 410; *Shepherd's Point Land Co.* v. *Atlantic Hotel*, 44 S. E. Rep. 39; *Smith* v. *Maryland*, 18 How. 71, 74.

Though his domain stops at low-water mark, the riparian proprietor (and he alone) may build out a wharf structure in aid of navigation. *Mobile Transp. Co.* v. *Mobile*, 13 L. R. A. 352; 1 Farnham on Waters, p. 227, § 113*b*; *Dutton* v. *Strong*, 1 Black, 23; *Yates* v. *Milwaukee*, 10 Wall. 497.

The legislature of Virginia has, by statutory enactment, declared this rule of law also. Code of 1887, §§ 998, 999.

In building a wharf under § 998, the riparian proprietor exercises an inherent privilege which he enjoys under the law. Whether he makes of his wharf a private "staith" or a public facility depends mainly on the use to which it is subsequently put. He may charge for the use of his wharf, but the charge must be "reasonable" if he serves the general public. Code of Virginia, § 999; *Transportation Co.* v. *Parkersburg*, 107 U. S. 691; *Riddick* v. *Dunn*, 58 S. E. Rep. 493; *Mobile Transp. Co.* v. *Mobile*, 13 L. R. A. 352; and see *Gibler* v. *St. Louis Terminal Assn.*, 203 Missouri, 208, for an exposition of the duties owed the public by a toll bridge owner, and what differentiates between such a public servant and a common carrier. Both serve the public, but a common carrier furnishes transporta-

tion. The duties of a wharf owner serving the public are the same as those of a bridge owner, with added responsibilities on the wharf owner to serve both the public or individual patrons coming to his wharf to secure the services of a carrier, and the carrier public coming to the wharf in the line of securing business or discharging traffic.

If the circuit court of a Virginia county permit any individual to build out a wharf from a "public landing" under Code, § 999, *supra*, it needs no argument to show that the public is the riparian proprietor, and the licensee builds under the power or privilege of the licensor—the county, or, in other words, the public.

Every such wharf is irrevocably affected with a public interest "*ab condide*," no matter how often it may be conveyed and pass from vendor to vendee. *Weber* v. *Board of Harbor Comrs.*, 18 Wall. 61.

Under the decision in *Dutton* v. *Strong*, 1 Black, 23, a private wharf, when maintainable at all, must be devoted habitually to private business. Even though built by a private proprietor opposite his own shore (a condition the record shows does not exist as to at least some of the wharves in controversy here), if devoted to purposes of public commerce for compensation, it is a public wharf. Lord Hale, "De Portibus Maris; and cases, *supra*.

The riparian owner who has built a wharf from his shore out into the navigable waters of the Rappahannock and invited the public to use his wharf, and who for hire has habitually so served the public, cannot burden that service with any such "condition" as that the shipping public must take passage over his wharf, either upon sailing vessels or else patronize exclusively the steamers of a single carrier. *Munn* v. *Illinois*, 94 U. S. 5.

Mr. Justice Peckham, after making the foregoing statement, delivered the opinion of the court.

It appears that the complainant herein is a corporation of

the State of Maryland and the defendant is a corporation of the State of Virginia, the individual defendants being officers or agents of such corporation and citizens of the same State. The complainant has been for a long time engaged in the business of transportation of passengers and freight between Baltimore and various landings or places on the Rappahannock River, in the State of Virginia, and for many years has been the owner or lessee of the wharves on that river mentioned in the bill of complaint. Some time before the commencement of this suit the defendant began the transportation of passengers and freight between Fredericksburg and Urbanna, in Virginia, and along the Rappahannock River in that State, stopping at the same wharves on that river as complainant and engaged in the same business. In order to transact its business it made use of the wharves owned or leased by the complainant, in spite of the opposition of complainant and against its protests, although defendant offered to make compensation for the reasonable value of the use which it made of such wharves in the prosecution of its business, which offers were refused by the complainant, and it notified the defendant to desist from the use of the wharves owned or leased by it. The action of the defendant in making use of the wharves of complainant was based upon the contention that the defendant had the legal right to do so, inasmuch as in many cases there were no other wharves at such places where the defendant desired to land, and that it was necessary to use such wharves in order that defendant might prosecute its business of transporting passengers and freight to and from the various landings on the river, and because the wharves had for many years been used by the public.

It was proved before the master (and we take the facts in the case, as found by him), that the complainant was the owner in fee of five different wharves along the banks of the river and of the land under the water where the wharves were built; also that the complainant was the lessee of eight wharves owned by different persons who had, prior to the commencement of this

suit, leased their exclusive use to the complainant, and that it was during the time of the existence of the leases that the defendant entered upon and used the wharves for its own purposes. The master reported that there was no evidence of any prior dedication of any of such wharves to the public, either those owned by or leased to complainant, and, of course, none of any acceptance thereof by the public authorities, nor was there any evidence of any condemnation of any of such wharves on the part or in behalf of any public authority; that the wharves were private wharves, either owned by the complainant in fee or leased by it, for its exclusive use, from the owners in fee of such wharves. The most that can be said is that in some cases the former owners of the wharves now owned by the complainant, as well as the lessors of the wharves before they leased the same, and while owners thereof, had built them and had permitted the public to use them, and had frequently received compensation for such use, and in many cases the use had been without compensation. After the sales of the wharves and after the execution of the leases neither the former owners nor the lessors made any claim to the use of the wharves or to any right to permit others to use them, either with or without compensation, and the complainant formally notified the defendant that the complainant refused to permit such use any longer. It appeared that public roads had been made from the surrounding country to the places where these private wharves had been built sometimes before the building of the wharves and sometimes the roads had been laid out after such wharves had been built. The use that had been made of the wharves after they had been built and prior to the purchase or leasing by the complainant was nothing more than such as was founded upon a mere license on the part of the owners and without any dedication of the wharves to the public or any acceptance on the part of the public further than by indiscriminate user, and with no taking or condemnation of the right to use the wharves as public wharves. The title to the wharves as private property remained unaffected in any

way, and there was nothing to prevent the withdrawal of license to use at any time. In some cases the wharves were the only ones that had been built at the places where such wharves existed and the use of such wharves was convenient for the transaction of the defendant's business.

The complainant is in the actual possession of all the wharves, those which it has purchased and those which it has leased, and its title and right to the exclusive possession of all of them is recognized and assented to by both grantors and lessors, and not one of them makes any claim of any interest in the wharves as against complainant.

The Circuit Court, in speaking of the facts as found by the master, said, p. 455:

"While the said thirteen wharves involved in this proceeding by no means include all the wharves or stopping places for vessels on the river, it may be said that they embrace the important wharves from which passenger and freight business is chiefly procured in passing up and down the river, and that the business from said wharves is large. With possibly a single exception these wharves are at the termini of public highways in the counties in which they are respectively built; the character of the business consists of passenger travel, and merchandise received over said wharves, consisting of the general products of the country; and they are the usual stopping places of persons living in the immediate neighborhood of the wharves, and of the inhabitants of the country for some distance in the interior. That at said wharves United States post offices are established, at which the mail of the people for the surrounding country is procured; and that, as to the wharves leased as aforesaid, the same were leased upon a rental of a commission of ten per cent of all freight charges and passenger fares collected by the complainant on said wharves, the owner of said wharves maintaining an agent there to assist in mooring the vessels of the complainant making landings there, and in receiving and forwarding freight therefrom, and at some of the wharves sail vessels from time to time moor and

lade and unlade, making proper compensation to the owners of the wharves for their use."

With reference to these facts the Circuit Court said that "While the special master is doubtless correct in his findings as to the actual ownership of the property rights in said wharves, namely, that they are the individual property of the several owners thereof, and as such pass regularly by the laws of descent and purchase, it by no means follows that said wharves are private *quoad* the public; that is, either the citizens desiring to use the wharves to reach the means of transportation upon and over said river, or owners of such methods of transportation plying the waters of said river; the obligation upon each being to render and pay to such wharf owner reasonable wharfage and charges for the use of his property, under such proper and reasonable regulations as might be imposed either by law or by the owner of the property."

The rights of a riparian owner upon a navigable stream in this country are governed by the law of the State in which the stream is situated. These rights are subject to the paramount public right of navigation. The riparian proprietors have the right, among others, to build private wharves out so as to reach the navigable waters of the stream. *Dutton* v. *Strong*, 1 Black, 23; *Yates* v. *Milwaukee*, 10 Wall. 497; *Transportation Co.* v. *Parkersburg*, 107 U. S. 691, 699; *Illinois Central R. R.* v. *Illinois*, 146 U. S. 387, 445; *St. Anthony Falls Water Power Company* v. *St. Paul Water Commissioners*, 168 U. S. 349, 368. The courts of the State of Virginia affirm the same rights of the riparian proprietor. *Norfolk City* v. *Cooke*, 27 Gratt. 430, 435; *Alex. &c. Railway* v. *Faunce*, 31 Gratt. 761, 765. If the wharf obstructs navigation or the private rights of others, or if it encroach upon any public landing, the wharf may be abated. Code of Virginia (1887), § 998. A private wharf on a navigable stream is thus held to be property which cannot be destroyed or its value impaired, and it is property the exclusive use of which the owner can only be deprived in accordance with established law, and if necessary that it or any part of it

be taken for the public use due compensation must be made. The owner of a private wharf on a navigable stream does not, on that account only, hold it by a different title from the owner of any other property which he may use himself or permit others whom he may select to use, while at the same time denying its use by any one else.

The case of *Munn* v. *Illinois*, 94 U. S. 113, 127, has, in our judgment, no bearing upon the question before us. In that case and in those cited therein the discussion was in regard to the right of owners of property of the nature described to charge what they pleased for the doing of the business in which they were engaged. Their property was being used with their consent by and its use devoted to the public to any extent desired, and the only question was in regard to the compensation which they were entitled to ask for the business thus done. The complaint was that the charges were too great and were a violation of a law of the State and were not reasonable, and the answer made by the owners of the property was that it was their private property, and they had the right to charge what they pleased. The court said, as you have devoted your property to a use in which the public has an interest, you have granted to the public an interest in that use and the right, on the part of the State, to regulate charges which you shall make, to the end that they shall be just and reasonable. If the owner of one of these wharves had devoted it to the public use and permitted the public to use it as it desired, and demanded compensation for such use, the question as to the amount of such compensation might be raised as in the Munn class of cases, to be determined with reference to the reasonableness of the charge. But this is no such case. The legislature has passed no law regarding rates, if that were material, and the reasonableness of the charge is not under consideration. The right to use the property has been withdrawn by the owner as to the public in general, including defendant. The only question is whether a third person has the right to use a private wharf on tendering reasonable compensa-

tion therefor, because there is no other wharf at the place, or because it would be more convenient to such third person to so use it or because the former owner of the wharf had permitted the public to use it, although the present owner refused to consent to such use. There is no more reason why such property should be held subject to the right of others to use it against the will of its owner than there is for any other kind of property to be so held.

The question as to the right of the owner to exclude others from the use of a private wharf on a navigable stream has been very recently decided by this court in *Louisville &c. Railway Co.* v. *West Coast Naval Stores Co.*, 198 U. S. 483, and the right of such owner to exclude any or all other persons from the use of such wharves was affirmed. The owner was not, it was also said, compelled to use the wharf exclusively for his own business or else to throw it open for the use of every one; that he could not only use it himself and permit some others to use it, but might at the same time exclude still others to whom he did not choose to grant such right. The case was not decided with reference to the existence of another wharf in the harbor. No such matter was adverted to.

And so in regard to the use of a private wharf by the public, with or without compensation to the owner. The public can obtain no adverse right as against such owner by mere user. To obtain it there must be an intention on the part of the owner to dedicate the property to the use of the public, and there must be an acceptance of such dedication on the part of some public authority, which may sometimes be implied (but not in such a case as this), and in the absence of such dedication and acceptance the use will be regarded as under a simple license, subject to withdrawal at the pleasure of the owner. *Harris* v. *The Commonwealth*, 20 Gratt. 833; *Gaines* v. *Merriman* (1898), 95 Virginia, 660; *Irwin* v. *Dixion*, 9 How. 10, 32. The rights of the public must have been obtained by an adverse user so as to take away from the owner the ordinary rights of ownership. In this case there was never anything but a mere

license. The mere fact that there may be no wharf in the particular place other than that owned by the complainant, and also the fact that the use of such wharf is very convenient or even necessary for the defendant in order to prosecute its business as a competitor of complainant, together with the fact that the former owners had permitted the public upon occasions to use the wharf, furnish not the slightest reason for holding that the wharf of complainant is held on the condition that it must continue to permit others to use it upon compensation, when they desire to prosecute their own business of transporting passengers or freight on the river. It was found by the master that there had never been any abandonment of the right of exclusive enjoyment of any of the wharves, and they were assessed for taxation to the owners and taxes paid on them by the owners.

Mr. Justice Bradley in *Transportation Co.* v. *Parkersburg*, 107 U. S. 691, 699, remarked (*obiter*) that whether a private wharf might be maintained as such where it is the only facility of the kind in a particular port or harbor, might be questioned. He recognized the law to be that there might be a private wharf in a navigable stream, and that the owner in permitting its temporary use by another would be at liberty to make his own bargain for such use. The remark was made with reference to the amount of the charges for wharfage, and the Justice doubted the right, under the circumstances stated, of the owner of a wharf to make such charges as he chose, without reference to their being reasonable. It is another matter, however, to say that the owner of a private wharf must permit its use by the public simply because the wharf he has built or purchased is the only wharf in the port, or because the public had theretofore been permitted to use the wharf, with only the rights of a licensee.

We see no sufficient reason for subjecting a private wharf to the public use, which may frequently include that of a competitor with the owner, simply because there is no other wharf at the place. A public wharf, it is presumed, may be built, or

if there be no place for one, the private wharf might be taken by public authority for the public use, upon compensation being made for the taking of the property.

We are of opinion that the decree of the court below is erroneous, and it is therefore

Reversed, with directions to enter a decree for an injunction as prayed for in the bill of complaint. So ordered.

END OF CASE